

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
77-5034

United States Court of Appeals
For the Second Circuit

In re APPLIED LOGIC CORPORATION.

Bankrupt.

NEW JERSEY NATIONAL BANK,

Plaintiff-Appellant,

-against-

DANIEL GUTTERMAN as Trustee of
APPLIED LOGIC CORPORATION, Bankrupt,

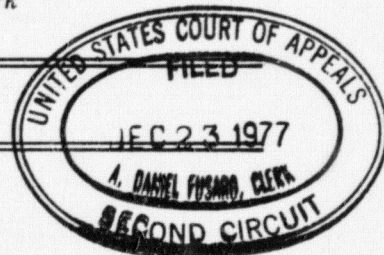
Defendant-Appellee.

*On appeal from the United States District Court
for the Southern District of New York*

JOINT APPENDIX

VOLUME II

Pages A-278 to A-509



HAHN, HESSEN, MARGOLIS & RYAN
Attorneys for Plaintiff-Appellant
Office & P.O. Address
350 Fifth Avenue
New York, New York 10001
Telephone (212) 736-1000

COUDERT BROTHERS
Attorneys for Defendant-Appellee
Office & P.O. Address
200 Park Avenue
New York, New York 10017
Telephone (212) 973-3300

Of Counsel:

Michael S. Landes
Gilbert Backenroth

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries	A-1
Summons and Notice of Trial	A-18
Complaint	A-20
Schedule A - Promissory Note dated May 25, 1971 in amount of \$100,000 executed by ALC in favor of New Jersey National Bank, with attachments	A-26
Schedule B - Security Agreement dated May 25, 1971 between ALC and New Jersey National Bank with attached schedules	A-31
Schedule C - Financing Statement dated May 26, 1971 filed with the Secretary of State of New Jersey; Financing Statement dated May 26, 1971 filed with Clerks of Mercer County and Somerset County; Financing Statement dated June 30, 1971 filed with County Clerk of Montgomery County, with attachments; Recapital- ization Agreement dated 9/15/71 be- tween ALC and other banks, with at- tachments, denominated in the Com- plaint as Exhibit C	A-39
Amended Answer with Counterclaims	A-83
Exhibit A - Three Commercial Loan Department Payments	A-91
Exhibit B - Receipt dated 4/4/75 by New Jersey National Bank	A-92
Exhibit C - Debit Advice dated 4/1/75 from New Jersey National Bank to ALC	A-93
Answer to Amended Counterclaims	A-94
Transcripts of trials held before Bankruptcy Judge Herzog on June 1, 1975 and July 24, 1975	A-106
Transcript of trial held before Bankruptcy Judge Babitt on June 23, 1976	A-207

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Exhibits introduced in evidence at trials of June 16, 1975 and July 24, 1975, and June 23, 1976, and stipulated exhibits, including the following:	
Plaintiff's Exhibits in Evidence:	
1. Promissory Note dated May 25, 1971 in amount of \$100,000 executed by ALC in favor of New Jersey National Bank with attachments (heretofore reproduced at pages A-27 through A-30)	A-376
2. Security Agreement dated May 25, 1971 between ALC and New Jersey National Bank with attached schedule (heretofore reproduced at pages A-32 through A-38)	A-376
3. Financing Statements filed June 1, 1977 by New Jersey National Bank against ALC covering described collateral, with at- tached Schedule A	A-378
4. List showing purchases of certificates of deposit by ALC	A-390
5. Signature cards signed by officer of ALC for Account held with New Jersey National Bank	A-392
6. Minutes of Board of Directors meeting of ALC held on August 29, 1976	A-393
7. Assignment of Savings Account to New Jersey National Bank by ALC dated November 1, 1976	A-399
Defendant's Exhibits in Evidence:	
A. Three commercial loan department payments, dated 12/9/74, 12/3/74 and 12/31 from New Jersey National Bank to ALC	A-400
B. Debit Advance dated 4/1/75 from New Jersey National Bank to ALC	A-402

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
C. Receipt dated 4/4/75, by New Jersey National Bank acknowledging receipt of cashiers check in amount of \$830.67 from ALC	A-403
D. 1970 and 1971 Agreements between ALC and other parties including New Jersey National Bank recapitalizing ALC debt, dated 9/20/70 and 9/15/71, respectively	A-404
E. Letter dated 3/3/72, New Jersey National Bank to ALC, directing current aging of accounts receivable to be sent each month to Credit Department	A-437
F. Letter dated 1/18/72 from ALC to New Jersey National Bank enclosing summary of accounts receivable aged as of 1/1/72	A-438
Stipulated Exhibit - Computer printout of monthly aging of ALC accounts receivable covering period between 7/18/74 and 8/10/74	A-439
Order dated August 10, 1976 adjudicating debtor-in-possession bankrupt and appointing Daniel A. Gutterman as Trustee	A-461
Memorandum Opinion and Decision of Bankruptcy Judge Babitt dated December 9, 1976	A-463
Order dated March 1, 1977 granting, in part, judgment for plaintiff and judgment for trustee on counter-claims	A-479
Notice of Appeal to District Court filed March 31, 1977 ..	A-485
Designation of Contents of Record on Appeal filed April 12, 1977	A-487
Opinion of District Court Judge Gerald L. Goettel dated October 14, 1977	A-492
Notice of Appeal to Second Circuit dated November 14, 1977	A-508

TABLE OF CONTENTS
(Continued)

Page

Index to Witnesses

MICHAEL S. LYNCH:

Direct (by Mr. Teich)	A-107
Cross (by Mr. Lebow)	A-112
Redirect (by Mr. Teich)	A-117
Recross (by Mr. Lebow)	A-136
Direct (by Mr. Robinson)	A-341

MARTIN T. MOBACH:

Direct (by Mr. Lebow)	A-139
Cross (by Mr. Teich)	A-168
Cross (by Mr. Robinson)	A-279

Index to Exhibits

Plaintiff's
Ex. in Evid.

Description (more fully described above)

1	Note	A-109
2	Security agreement	A-110
3	Copies of UCC filings	A-110
4	List showing purchases of C.D.'s by the defendant	A-129
5	Group of signature cards	A-174
6	Copy of Minutes of board of directors meeting held on August 29, 1972	A-296
7	Document	A-331

Defendant's
Ex. in Evid.

A	Credit advices	A-115
B	Credit advice of bank as of 4/1/75	A-141

TABLE OF CONTENTS
(Continued)

<u>Defendant's Ex. in Evid.</u>		<u>Page</u>
C	Credit advice representing interest	A-141
D	Agreement dated 9/2/70 and agreement dated 9/15/71	A-143
E	March 3, 1972 letter	A-149
F	January 18, 1972 letter	A-149

[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

A-278

In the Matter
of

APPLIED LOGIC CORPORATION,

Debtor.

No.

June 23 1976

U. S. Courthouse,
Foley Square,
New York, New York.

Adj. XI-4 Hearing; Adj. Confirmation
Adj. Objections to Claims
Adj. S/C (New Jersey National Bank)
Adj. S/C (City Financial)

B E F O R E :

HON. ROY BABITT,

Bankruptcy Judge

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

CORLANDT 7-3877
3878

2 A P P E A R A N C E S :

3 COUDERT BROTHERS,
4 Attorneys for Debtor,
5 200 Park Avenue,
6 New York, New York.

7 BY: MARK D. LEBOW, ESQ.,
8 of Counsel.

9 LEON ROBINSON, ESQ.,
10 Attorney for New Jersey National Bank,
11 143 East State Street,
12 Trenton, New Jersey.

13 - - -

14 P R O C E E D I N G S

15 M A R T I N M O B A C H , called as a witness,
16 having been previously duly sworn, resumed
17 and testified further as follows:

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q Mr. Mobach, let me get directly to
21 this account that was maintained with the New Jersey
22 National Bank and let me specifically ask you
23 whether or not you remember, your own personal know-
24 ledge, when that account was opened with the New
25 Jersey National Bank?

A It is not my own recollection but based on
going through old files of the company, it was es-
tablished that the account was opened some time in

2

Applied

3

4

1968, I believe, at which time I was not with the company.

5

6

7

8

Q Would you know who the president of the company was at that time, again, from your examination of these various documents and records that you referred to?

9

10

A Yes. For a time Mr. Richard --

11

12

Q Mr. Mobach, I don't want to cut you short but I am referring back to the date that you gave, 1968.

13

14

A Richard M. Colgate.

15

16

17

Q Would you know what officer of the bank he was dealing with at that particular time, again, from your examination of the records of your company?

18

19

A According to the correspondence that I found, Mr. Lynch.

20

21

Q When did you actually become associated with the company?

22

A In November of 1969.

23

24

25

Q In 1969, November 1969, when you became associated with the company was this account still the account of Applied Logic Corporation?

2 Applied

3
4 A When you ask me, the account, I don't under-
stand what you mean by that.

5 Q Was it an account of Applied Logic?

6 A It was a account of Applied Logic set up
7 for the purpose of purchasing equipment which in
8 turn was to be sold to leasing companies and then
9 leased back by the company.10 Q Mr. Mobach, you indicated you didn't
11 deal with the bank at the time this account was
12 set up, did you?

13 A That's correct.

14 Q Do you know the purpose for which
15 this account was set up originally?16 A Yes, sir, because it was alluded to by the
17 financial vice-president who also was a member of
18 the board at board meetings that I attended.19 Q Let me ask you, in regard to that
20 particular account -- let me ask in regard to
21 any account -- where did you pay your electric
22 bills from? I am referring to an account. I know
23 my question ^{is} phrased a little awkwardly.24 A To the best of my recollection during the
25 time that I was with Applied Logic, they were paid

2
3 from the First National Bank of Princeton.

4 THE JUDGE: Wasn't that a payroll
5 account?

6 A No, sir. We had two accounts prior to any
7 agreement we entered into.

8 THE JUDGE: Two accounts with
9 First National Bank of Princeton?

10 A That's correct.

11 Q At the time you came to the bank
12 in 1969 you had another account besides the pay-
13 roll account with the First National Bank of
14 Princeton; is that what you are telling me?

15 A I didn't come to any bank. The question is
16 when I came to the bank.

17 THE JUDGE: He meant to the company.

18 Q To the company.

19 A Would you repeat the question.

20 Q When you came to the company, I
21 am referring to Applied Logic, did you have another
22 account besides whether it may have been the First
23 Trenton National Bank -- does that name sound
24 familiar to you, incidentally?

25 A I think that was the name of New Jersey

2 Applied Logic

3 National Bank prior to my joining with the company.
45 Q Do you remember when the name of
6 the bank was the First Trenton National Bank?

7 A I don't.

8 Q Let me get back to the question I
9 asked before.10 What account did you pay your
11 electric bills out of?12 I am going back to 1969 when you
13 came to the company.14 A Without looking at the record I couldn't
15 answer that.16 Q Would you know what account you
17 paid your fuel bills out of?18 A I know that most accounts rather than
19 being specific about fuel bills or electricity
20 bills were paid through First National Bank of
21 Princeton.22 Q Back at that time, are you telling
23 me that this account at either the First Trenton
24 National Bank or the New Jersey National Bank,
25 whatever the name may have been, was used for one
specific purpose in reference to leasing transactions?

2 Applied Logic

3 A That is the way that the financial vice-
4 president of the company reported it to me.

5 Q Mr. Mobach, let's forget the
6 financial vice-president of the company and let
7 me ask you in regard to the fact that you were
8 the president of the company.

9 A I was not.

10 Q What was your capacity at that
11 time?

12 A Vice-president of marketing.

13 Q In connection with marketing, what
14 account did you use?

15 A In connection with marketing I didn't use
16 any account in that capacity at all. It was handled
17 by the financial vice-president.

18 Q Mr. Mobach, in your testimony back
19 a year ago you were talking about this account
20 being used actively, checks being written five
21 days a week, if I remember correctly.

22 Do you remember that testimony?
23 Do you want me to look it up?

24 A That testimony was pertinent to everything
25 that went on after the financing agreement of

2 Applied Logic

3 September 2, 1970.

4 Q Mr. Mobach, do you remember this
5 morning when you used the expression in reference
6 to this particular account when you said all trans-
7 actions of the company were handled in this account?
8 Do you remember that testimony?

9 A That's correct, but that was not prior to
10 September 2nd of 1970, sir. My testimony was
11 pertinent to the transactions after the account
12 was set up as a sole custodian account for the
13 company and I so testified.

14 If I implied a different thing, then
15 I would like to have this opportunity to set the
16 record straight.

17 Q Let's go back to when this account
18 was set up.

19 You say that this account was used
20 in regard to leasing transactions; is that the
21 expression you used?

22 A Purchasing transactions of equipment that
23 subsequently was to be sold to leasing companies
24 and then leased back by Applied Logic Corporation.

25 Q Was this account set up specially

2 Applied Logic

3
4 for that purpose?

5 A That is my understanding.

6 Q If we get to what this account
7 was used subsequently as, according to what you
8 now tell me, was the purpose of the account changed
9 at some time?

10 A Yes, I think so.

11 Q Mr. Mobach, will you show me where
12 any place in the records of the company it in-
13 dicates in regard to a change in the account?14 A I think if we go back to the financing
15 agreement of 1970, September 2nd.

16 Q Yes.

17 A I think that implies that the purpose of
18 the account was changed.19 Q Mr. Mobach, I am going to give you
20 that agreement. I am willing to take a little time
21 for you to find in that agreement what you are
22 referring to.23 A It is the paragraph where all the company
24 financial matters are to be channeled through New
25 Jersey National Bank.

MR. LEBOW: Page 5.

2 Applied Logic

3
4 A I would appreciate your help.5 Q Let's refer to the agreement of
6 September 2, 1970. Look at Page 5-A and may I ask
7 you what you see on 5-A?8 THE JUDGE: That is what we dealt
9 with before.10 MR. ROBINSON: That's correct,
11 your Honor.12 THE JUDGE: I would say the next
13 to last sentence in the top paragraph.14 MR. ROBINSON: That's correct,
15 your Honor. Starting with the words A.L.C.,
16 that's correct.

17 A That's correct.

18 THE JUDGE: It is from that
19 sentence --20 A A.L.C. shall conduct all banking of its
21 funds at and through New Jersey National Bank.22 THE JUDGE: You say it is from
23 that sentence that you just read --24 A Yes, and I was going to add something to
25 it, your Honor.

Q Mr. Mobach, be my guest.

2 Applied Logic

3 A Preceding the execution of this agreement,
4 we had approximately seven months of negotiations
5 with all the parties that signed this agreement,
6 and those were discussions which I was personally
7 present and so was Mr. Lynch, so were representa-
8 tives of the other creditor parties to the agree-
9 ment. It was distinctly agreed upon that we should
10 handle everything from one account at the bank.
11 This is why --

12 Q That is exactly what we have in 5-A,
13 that the account -- that A.L.C. shall conduct all
14 banking of its funds at and through New Jersey
15 National Bank until both notes are paid; correct?

16 A Yes.

17 THE JUDGE: In fact, did you
18 have any other bank accounts after
19 September 2, 1970?

20 A No, sir. they were closed.

21 THE JUDGE: No other bank accounts?

22 A Except for the payroll account at First
23 National Bank of Princeton which I testified to
24 this morning.

25 THE JUDGE: Just as a payroll

2 Applied Logic

3 account?

4 A Just as a payroll account and the monies
5 that went into the payroll account were transferred
6 from the Jersey National Bank -- in other words,
7 no receivables entered into that account directly.

8 THE JUDGE: It was convenient
9 for your employees in that area; is that
10 what you are saying?

11 A It was a statutory requirement.

12 Q Mr. Mobach, you used that New Jersey
13 National Bank account then -- let's take the period
14 after September 2, 1970 so we have a definite
15 orientation as far as dates are concerned.

16 You used that account to take funds
17 out of in order to transfer into your payroll ac-
18 count; is that correct?

19 A That's correct.

20 Q Let me get back to the very simple
21 question that I asked before as an illustration.

22 Did you use that New Jersey National
23 Bank account to pay your electric bill or bills?

24 A After that time, yes.

25 Q Did you use that account to pay --

Applied Logic

let me take another sample -- fuel bills?

A As I testified this morning, we used that account to pay for all accounts payable.

Q When you say all accounts payable, are you talking about, for example, trade accounts payable?

MR. LEBOW: What period of time are we talking about now, your Honor.

I think we are getting a little confused.

THE JUDGE: The period immediately following September 2, 1970.

MR. ROBINSON: That is exactly what I was trying to do, your Honor, and I thought I had indicated that at the beginning of the line of questions.

Q After September 2, 1970, did you pay your trade payables out of this New Jersey National Bank account?

A Yes, we did.

Q Was that account used to pay interest, for example, to the New Jersey National Bank on loans from the New Jersey National Bank?

A Yes, it was.

2 Applied Logic

3
4 THE JUDGE: In fact, outside of
5 the payroll account in Princeton, were
6 there any items drawn by this debtor,
7 Applied Logic, or by the company for any
8 purpose other than out of the Jersey bank
9 account?

10 A No, sir.

11 THE JUDGE: It was everything?

12 A Everything.

13 THE JUDGE: Excepting the payroll
14 account maintained in Princeton and as
15 to which the funds came in through the
16 Jersey bank?

17 A Even that was drawn out of the New Jersey
18 bank.

19 THE JUDGE: All of your transactions
20 basically were with the plaintiff in this
21 action?

22 A That's correct.

23 Q As a matter of fact, Mr. Mobach,
24 we were on Page 5-A. If I take you back to 5-A
25 and if I remember in your pleadings in this par-
ticular matter there was something in regard to

2

Applied Logic

3

funds being held on behalf of banks, plural.

4

5

Do you notice that expression in
the middle of Page 5 of that agreement of September 2,
1970?

6

7

A Yes.

8

9

Q Isn't that referring to, as a
matter of fact notes, a note -- let me be specific --
a note in the amount of \$1 million which was to be
held by the New Jersey National Bank on behalf of
the other banks?

10

11

12

13

14

Is that the expression used on
Page 5 in that agreement?

15

A Yes, it is.

16

17

18

19

20

Q If I go to Page 5-A, and we are
now dealing not with the notes but we are now
dealing with a bank account, on Page 5-A do you
see any expression in regard to this bank account
to be held on behalf of the other banks?

21

THE JUDGE: It speaks for itself.

22

MR. ROBINSON: I realize that.

23

24

THE JUDGE: I think he would not
be obliged to answer that. It is obvious
there is no repeat of that phrase on 5-A.

25

2 Applied Logic

3
4 Isn't that what you are saying?

5 MR. ROBINSON: That's correct.

6 I am trying to indicate whoever drafted
7 it was obviously making a differentiation.

8 THE JUDGE: Maybe.

9 MR. ROBINSON: I apologize.

10 THE JUDGE: In any event, I can
11 glean that.12 Q If we go to that agreement of
13 September 1 -- sorry -- September 15, 1971 -- and
14 Mr. Mobach, I am going to refer you to Page 9 of
15 that agreement --16 THE JUDGE: Let the record show,
17 Miss Reporter, that that is part of
18 Exhibit D, the two instruments are an-
19 nexed as part of the same exhibit.20 Q I refer you specifically to Para-
21 graph 8. We see a reference there, am I correct,
22 if I said this, Mr. Mobach, to a special account?

23 A Yes, I see that.

24 Q After this agreement of September 15,
25 1970, was a special account opened up in the New
Jersey National Bank?

2 Applied Logic

3 A No, it was not.

4 Q Those payments that they are re-
5 ferring to went into what account?

6 A It was determined at that time --

7 Q Mr. Mobach --

8 MR. LEROW: May he answer the
9 question?10 THE JUDGE: Let him answer. It
11 will make it a more structured trial. You
12 can let him explain in his answer. I am
13 sure Mr. Robinson won't foreclose it as
14 the next question.

15 Which account?

16 A We had one account at the New Jersey National
17 Bank. This recapitalization agreement required
18 a special account. Since New Jersey National Bank
19 was handling everything, the requirement of setting
20 this up as another account and going through a
21 total burden of -- administrative burden on Applied
22 Logic to set up a series of accounts was waived
23 since New Jersey National Bank had the monitoring
24 device on this account in toto.

25 Q Mr. Mobach, you used the expression

2 Applied Logic

3 waived and I heard that expression earlier today.

4 May I ask you specifically whether
5 or not you were asked to bring -- you were sub-
6 poenaed as a matter of fact -- to bring in the
7 minutes of the corporation.

8 Am I correct when I say that?

9 A Partially.

10 Q As a matter of fact, in order to
11 facilitate matters, Mr. Lebow supplied to our
12 office photostats or Xerox copies, I don't know
13 which it may be, of certain --

14 A That is not correct.

15 Q Where did these minutes come from?

16 A These minutes came from a personal visit
17 by Mr. Dietz to my office with a secretary. We
18 spent the whole day going through all the minute
19 books so I won't have to drag them into court and
20 he made -- he asked me to make copies of it and
21 I provided them with the copy, and not Mr. Lebow.22 Q Mr. Mobach, do I have what appears
23 to be either a photostat or a Xerox copy of minutes
24 of a board of directors meeting of Applied Logic
25 Corporation held on August 29, 1972.

2 Applied Logic

3 I would like you to look at it and
4 tell me whether or not there is any question with
5 regard to that being a copy of the minutes of that
6 particular meeting as would have come out of your
7 minute book?

8 A I don't think I have any question as to
9 that.

10 MR. ROBINSON: If you Honor please,
11 I would like that marked for identification.

12 MR. LEBOW: No objection.

13 THE JUDGE: Mark it Plaintiff's
14 Exhibit 6 for identification.

15 (Copy of minutes
16 of board of directors
17 meeting held on
18 August 29, 1972, was
19 marked as Plaintiff's
Exhibit 6 for identification, as of
this date.)

20 MR. ROBINSON: If there is no
21 objection I would like to ask that
22 it be introduced at this particular time.

23 MR. LEBOW: I have no objection.

24 (Plaintiff's Exhibit 6
25 for identification was
received in evidence,
as of this date.)

2 Applied Logic

3 Q Mr. Mobach, in these minutes on
4 the third page at the bottom of the first paragraph I
5 notice the sentence, the board authorized payment
6 of creditors directly instead of through a special
7 account to expedite the receipt by individual
8 parties.

9 First, let me ask you whether or
10 not you have any recollection in regard to how that
11 particular sentence came to be in the minutes of
12 that meeting?

13 A Yes, I do.

14 Q Was there discussion by the board?

15 A There was discussion by the board pertinent
16 to setting up such an account. Mr. Lynch participated
17 in it.

18 Q Was there any discussion in regard
19 to setting up a special account pursuant to Para-
20 graph 8 of the recapitalization agreement of
21 September 15, 1971 which was in Exhibit D?

22 A There was a discussion whether a separate
23 account was going to be set up or not, yes.

24 Q Was a decision made to use the
25 general account of the corporation for this purpose

2 Applied Logic

3 rather than setting up a special account?

4 A With the consensus of the board that since
5 the account that we have there was a custodian
6 account anyhow for the company, that it would not
7 make sense to burden the company with additional
8 administrative work.

9 Q By this custodial account you are
10 referring to this account that we were discussing
11 before this one account with New Jersey National
12 Bank?

13 A The word custodial is my expression.

14 Q Do you remember any other discussion
15 that took place at the board meeting in reference
16 to a special account?

17 I am referring to the board meeting
18 the minutes of which have now been made Exhibit 6.

19 A What specifically are you referring to?

20 Q Mr. Mobach, I am not referring to
21 anything specifically except in regard to that
22 particular subject and ask whether or not you
23 remember any discussion in reference to a special
24 account being set up?

25 A No, other than what I have just testified to.

2 Applied Logic

3 Q Incidentally, I notice you have
4 been perusing those minutes. We had a reference
5 earlier today in regard to monthly reports that
6 were made to New Jersey National Bank.

7 Were monthly reports made to the
8 Board of Directors?

9 A Yes.

10 Q As a matter of fact, those reports
11 were rather detailed and am I correct when I say that?

12 A I think so.

13 Q I have a series of minutes here
14 and in perusing them I note that at every meeting
15 as a matter of fact there was a rather detailed
16 report in regard to the financial condition of the
17 corporation. Would I be correct?

18 A That's correct.

19 Q This morning we discussed accounts
20 receivable. Was there a report to the board each
21 month in regard to accounts receivable?

22 A Only a summary report.

23 Q You also indicated there was a
24 report monthly to the New Jersey National Bank
25 in regard to accounts payable; is that correct?

2
3
Applied Logic

4 A That's correct.

5 Q Do you have any record whatsoever
6 of these reports to the New Jersey National Bank
7 in regard to accounts payable?8 A Not with me but I am sure that we have them
9 in file.10 Q Mr. Mobach, would I be correct
11 when I say that your thinking in regard to that
12 particular subject, accounts payable, that you are
13 referring to these monthly reports that you made
14 to the board of directors?15 A No, sir, I am not. These were more detailed
16 reports then we gave the board of directors. This
17 is an actual aging that comes over the computer
18 and the computer listing was given the bank.19 Q You are very specific in regard to
20 the fact that this dealt with payables as well as
21 receivables?22 A Yes, because that was what the bank always
23 requested from us.24 Q Where do you have a request from
25 the bank in regard to payables? Do you have any-
thing here to show me in regard to a request from

2 Applied Logic

3 the bank for payables?

4 A No. As I understand it, that was usually
5 verbally to our accounting department.6 Q You don't know anything about that
7 to your own personal knowledge, though, do you?8 A I think on a couple of occasions when the
9 report was late that Mr. Lynch asked me personally
10 about it.

11 Q When was that, Mr. Mobach?

12 A Specifically I couldn't answer that.

13 THE JUDGE: Did you ever see such
14 a report?

15 A Yes, I did.

16 THE JUDGE: Can you see anything
17 to do with payables?

18 A Yes, sir.

19 THE JUDGE: You can see this?

20 A I can see --

21 THE JUDGE: Entries for payables
22 as well as receivables?

23 A That's correct.

24 THE JUDGE: You have physically
25 seen such report?

2 Applied Logic

3 A I have physically seen such report and the
4 report is subdivided in catagories, current, thirty
5 to sixty days, over sixty days; the same as the
6 accounts receivable.

7 Q Incidentally, you talked about another
8 account at the First National Bank of Princeton.

9 Would you know when that account
10 was opened up? I am not talking about a payroll
11 account.

12 A That account was opened up again before I
13 joined the company. Approximately the same time
14 or shortly after the account with First National
15 Bank for the same purpose.

16 Q When was that closed?

17 A That was closed immediately upon entering
18 into the agreement of September 2, 1970.

19 THE JUDGE: You still kept the
20 payroll account?

21 A Yes, we did.

22 Q Let me refer to these monthly ac-
23 counts, monthly reports, if I can refer to them
24 as such.

25 I refer you again to Exhibit D.

2 Applied Logic

3 I am specifically referring you to the recapitaliza-
4 tion agreement of September 15, 1971. I ask you
5 to turn to Page 10.

6 A I have it.

7 Q The very last sentence on that page.
8 Would you read it for us.

9 A A.L.C. shall report monthly to the banks a
10 current aging of its accounts receivable.

11 Q Is there any continuation of that
12 sentence or that paragraph on the next page, 11?

13 A After payment in full of category one,
14 category two claims as ^{set} forth in Schedule 1
15 consisting of the remaining portion of the close-
16 out debt in the aggregate of \$3,44⁴,519.93 shall
17 be paid prior to any payment on the account of
18 category 3.

19 Q Let me go back to Page 10 or Page 11
20 or any page in that particular agreement.

21 Any requirement that A.L.C. shall
22 report to the banks a current aging of its accounts
23 payable?

24 THE JUDGE: Not from what you read.

25 Anywhere else?

2 Applied Logic

3 A It was part of the control mechanism that
4 the bank requested.

5 THE JUDGE: It is not in this
6 instrument?

7 A That's correct.

8 THE JUDGE: Do we have any of
9 those reports? Are those such dark secrets
10 on a par with at least the secrets of the
11 atom?

12 MR. ROBINSON: I will have Mr.
13 Lynch testify --

14 THE JUDGE: Why couldn't I see one?

15 MR. ROBINSON: We will bring them,
16 your Honor.

17 THE JUDGE: What greater proof
18 as to the truth as to look at a column
19 in the statement or report showing payables.

20 MR. ROBINSON: Your Honor, please,
21 I agree with you a hundred per cent. His
22 testimony was such, it was a surprise this
23 morning when he so testified and frankly,
24 we are in New York and those records are
25 in Trenton. I respectfully submit we will

2 Applied Logic

3 have them.

4 THE JUDGE: Can it be stipulated
5 that any representative set of them will
6 be sufficient, so I can waive this tes-
7 timony, Mr. Lebow?

8 MR. LEBOW: No objection. I know
9 it is a computer print-out but do you have
10 any representative samplings of these in
11 the file?

12 A Yes, I can even recreate them.

13 THE JUDGE: I don't want a re-
14 creation. I would like to see a report
15 that was furnished the bank pursuant to
16 this agreement.

17 MR. ROBINSON: The point is what
18 was supplied to the New Jersey National
19 Bank. The New Jersey National Bank is
20 in a position to present reports in regard
21 to accounts receivable. We have no reports
22 in regard to payables. I so represent to
23 the court.

24 THE JUDGE: I would like to see
25 one. Would they be separate reports or

2 Applied Logic

3 would they all be part -- I am afraid my
4 mind doesn't give me a picture. What
5 did the report look like? How often were
6 they rendered? Let's start with that.

7 A The report looked like a typical computer
8 print-out where it shows the categories of payments,
9 the names of the parties to be paid as far as ac-
10 counts payable is concerned. It has on the top
11 accounts payable aging.

12 THE JUDGE: You sent this com-
13 puter run to the bank?

14 A Yes.

15 THE JUDGE: Right after your com-
16 puter it went to the bank?

17 A Yes. When we need additional copies, this
18 information is on tape --

19 THE JUDGE: Memory?

20 A A memory.

21 THE JUDGE: You mean to tell me
22 that if I send one of them back to your
23 bank, you couldn't give me this computer
24 run for any day, month or what?

25 He just told me that the computer

2 Applied Logic

3 run was so programmed that it gave re-
4 ceivables and payables and I guess other
5 information.

6 Is that right?

7 A That is primarily receivables and payables.

8 THE JUDGE: Both on the same run?

9 A No.

10 THE JUDGE: They were separate
11 runs?

12 A They were separate runs, separate reports.

13 THE JUDGE: Separate reports but
14 rendered at the same time?

15 A That's correct.

16 THE JUDGE: To cover the same
17 period?

18 A That's correct.

19 THE JUDGE: One receivables, one
20 payables?

21 A That's correct. This information in summary
22 form went into the report to the board.

23 THE JUDGE: I am not interested
24 in the board. I am interested in the
25 bank.

2 Applied Logic

3
4 Mr. Lynch, do you suppose in some
5 way the bank's people can get me one of
6 these or these reports? I would like to
7 see one payable report.

8 MR. LYNCH: The point of the line
9 of questioning is I don't believe we can
10 supply that to you.

11 We received receivable listings
12 as required under the agreement --

13 THE JUDGE: That is going to be
14 a matter of testimony and credibility.
15 I assumed I could see one of these reports.
16 I take it then, if I understand you, Mr.
17 Mobach, these were separate reports. You
18 push Button A and you got payables. You
19 push Button B and you got receivables?
20 A In a way.

21 THE JUDGE: If they didn't get
22 the report of payables, I would have to
23 believe that you furnished them, obviously,
24 because I don't want you to push the button
25 now and give me today a payable --

A Your Honor, it is conceivable that there is

2 Applied Logic

3 still a marked copy in the file as well of it.
4

5 THE JUDGE: Go ahead.

6 MR. ROBINSON: If your Honor please,
7 that point that I was trying to get at
8 is here in the agreement. We talk about
9 accounts payable, monthly reports of ac-
10 counts payable.11 THE JUDGE: That doesn't mean
12 they couldn't be very zealous in pro-
13 viding you with payables.14 MR. ROBINSON: I agree with that.
15 We will get to Mr. Lynch then.16 Q Let's go from the account, this
17 account that we are talking about -- before we get
18 off the account, Mr. Mobach, let me stay with it
19 for a minute.20 On July 24, 1975, there was intro-
21 duced as Exhibit 5 this folder. I would appreciate
22 it if you would have it handy as I ask these next
23 questions.24 I see right on top in that folder
25 a signature card or as a matter of fact throughout
that folder you will find not only that signature

2 Applied Logic

3 card but other signature cards.

4 Anything unusual about those sig-
5 nature cards as far as you know as an officer
6 of the corporation and having dealt with banks
7 and corporate accounts?

8 MR. LEBOW: I object to the question.

9 I think that those documents speak for
10 themselves.

11 THE JUDGE: I will allow it.

12 Can you answer the question, Mr.

13 Mobach?

14 A I don't understand the question as far as --

15 O Is there any reference on any of
16 those cards that this is, for example, a special
17 account?

18 THE JUDGE: I think maybe Mr.

19 Lebow is right.

20 MR. LEBOW: It is not our contention
21 that the account was opened by the sig-
22 nature cards created a special account
23 but it was Exhibit D that created the
24 special account and the implementation
25 thereon.

2 Applied Logic

3 THE JUDGE: Some identification,
4 Mr. Robinson, to denote special or flag
5 or tag or whatever.

6 MR. ROBINSON: That's correct.

7 THE JUDGE: I will look at them.

8 Q Earlier today, Mr. Mobach, you
9 referred to receipts coming into the company. You
10 indicated that these receipts went into the account.

11 Just so that we may have a refer-
12 ence to what this testimony was in regard to, this
13 is when you were saying that when you got up to
14 \$100,000 then you convert into CD's. When you
15 referred to receipts going into this account, what
16 receipts were you referring to?

17 A Receipts that came in from the parties
18 that partook in equity financing, receipts that
19 came from accounts receivables, receipts that came
20 from occasional sale of equipment.

21 In other words, all the receivables
22 that the company took in.

23 Q You used earlier today the expres-
24 sion working capital. What did you mean by work-
25 ing capital?

2 Applied Logic

3 A As it is provided for in the definition
4 of working capital in the recapitalization agree-
5 ment of September 15, 1971.

6 I believe the definition is one of
7 the difference between current assets and current
8 liabilities. That amount at the time that we had --

9 Q Mr. Mobach, you have me lost, please,
10 before you even continue.

11 Where do you see that in that
12 agreement?

13 A Paragraph 3, Page 5 of the recapitalization
14 agreement of September 15, 1971.

15 Q I see the expression working capital.
16 I realize that but you said that this agreement
17 had a definition of working capital.

18 I see on Page --

19 A Page 6 on top it says in quotes, "working
20 capital," end quotes, shall mean ^{access} access of current
21 assets over current liabilities including the
22 necessary adjustments which would represent the
23 full effect of this agreement as determined in
24 accordance with generally accepted accounting
25 principles consistently applied.

2 Applied Logic

3 Q That is the money that is used to
4 operate the company; is that correct?

5 A To a certain extent. The working capital
6 as it is defined in here have also a different
7 meaning. The meaning that should be attached to
8 this is that the company has sufficient funds to
9 get a viable commission again.

10 Q Mr. Mobach, I just listened to you
11 as you correctly indicated the agreement defines
12 working capital.

13 When you talk about an ^{even} access of
14 current assets over current liabilities with ad-
15 justments, are you talking about the money that
16 the company was using to operate with?

17 A It is also -- I think part of it is the
18 money to have a security so that there is a positive
19 balance there.

20 As far as current assets and
21 current liability, it would not be a defunct
22 proposition. As far as the total balance is con-
23 cerned, the company was totally in insolvency during
24 the period of these six and a half years.

25 Q When we use that expression, we

2 Applied Logic

3 are not talking in terms of, for example, capital
4 of the company?

5 A I think we are.

6 Q Could there be working capital,
7 for example, in the company without cash?

8 A That is hardly positive.

9 Q Let me get back to the \$100,000
10 accumulation. They went into CD's at that par-
11 ticular point. Who made the decision that the
12 \$100,000 would go into the CD's?

13 A I think that was a joint decision between
14 the bank and myself. As I testified this morning,
15 the consideration to put it into CD's was in order
16 to derive interest income since we had a tremendous
17 outflow of interest payments to the creditor parties.
18 If the access amount that the company would need
19 for its normal obligations for the monthly payments
20 were lying dormant and that account would not
21 yield interest, that would not have been to the
22 benefit of the parties to this agreement.

23 Q \$100,000 was accumulated as ob-
24 viously we gather the figure was at various times.
25 What was the procedure in getting it converted

2 Applied Logic

3 into a CD out of this account?

4 A The procedure would be as follows: We
5 would get a phone call, one of the personnel of
6 the bank --

7 THE JUDGE: "I" meaning who?

8 A Applied Logic Corporation. It was very
9 seldom that I personally got involved. Other than
10 giving my assessment of the thirty against the
11 sixty against the ninety day note as far as the
12 interest rates are concerned --13 THE JUDGE: Your company got a
14 call from the bank?

15 A That's correct.

16 THE JUDGE: And?

17 A Indicating to us which CD, what length of
18 time, would yield the highest percentage interest,
19 whether we wanted a thirty day or a sixty day or
20 a ninety day expiration. The bank then would put
21 the money into a CD and ask us to ^{back} it up with
22 a written request for their records.23 THE JUDGE: Did you have to go
24 along with the bank as to whether it is
25 thirty, sixty or ninety or that decision

2 Applied Logic

3 was yours?

4 A The decision was really the highest yield.
5 As far as the decision making was concerned, there
6 was no big decision making process involved.

7 Q Mr. Mobach, I might even say that
8 the services that were being rendered with refer-
9 ence to these CD's would be the normal banking
10 service you would expect from your bank; is that
11 correct?

12 A Probably under normal circumstances that
13 would be correct. I think these were abnormal
14 circumstances. I don't think that the bank has
15 extended those services to Applied Logic.

16 Q Incidentally, was there anything
17 special about these CD's, any notations?

18 A I think so. The reason why I say this --

19 Q Let me finish my question. Any-
20 thing on those CD's to indicate that they were
21 being held for a special purpose or that they were
22 special in any way whatsoever?

23 A That I don't know. I have never seen those
24 CD's. All we got was the numbers.

25 Q Actually you don't know personally

2 Applied Logic

3 anything about those CD's except what you have told
4 us so far today; is that correct?

5 A What do you mean by saying I don't know
6 anything about those CD's?

7 Q Did you ever see the CD's?

8 A No, but we got a record of numbers from
9 the bank and by number we entered it into the
10 books because those CD's were yielding also inter-
11 est and we had to indicate in our general ledger
12 where the yields came from. In a normal account-
13 ing procedure, we had the knowledge of the trans-
14 action from the bank without actually seeing
15 physically the instrument itself.

16 Q In these records, did they indicate
17 anything special in regard to those CD's, to re-
18 peat a question I think we are getting an answer on?

19 A No, all it indicated was a number.

20 Q Webster Todd, is that the correct
21 name that you gave us earlier?

22 A Yes.

23 Q You indicated that you had a personal
24 call in regard to Webster Todd check or checks?

25 A On about two or three occasions, that's

2 Applied Logic

3 correct.

4 Q Dates, place?

5 A Starting with the most recent one was
6 December of 1974, around the 12th or 13th of the
7 month and June preceding that December, also 1974
8 and I believe December of 1973 or June 1973; one
9 of those two.

10 I am not exactly sure which payment
11 it was of those two that were made in 1973.

12 Q Mr. Mobach, two of the dates you
13 gave me were after the acceleration date of the
14 New Jersey National Bank note.

15 A That is not correct; only one. New Jersey
16 National Bank accelerated its note in July of 1974
17 and the request came in June of 1974.

18 Q Had you already had discussions
19 with regard to the fact that the New Jersey National
20 Bank was going to accelerate its note?

21 A Not at that time, no. As a matter of fact,
22 the letter of acceleration which we received on
23 or about July 5th of 1974 came as a total surprise.

24 Q Incidentally, why did Mr. Lynch
25 get in touch with you especially on three occasions

2 Applied Logic

3 in regard to Webster Todd checks?

4 A I think because it was not one of our
5 normal payables. It was a prepayment for six months
6 on the land lease that we had. Because of the
7 amount involved, it being \$12½ thousand each time,
8 I can only surmise that he may have had questions
9 in his mind --

10 Q You mentioned a couple of occasions
11 and yet when you answered the questions for Mr.
12 Lebow earlier today you are referring to one check
13 in the amount of \$12,500. Do you remember that?

14 A I wasn't referring to one check. I was
15 referring to three checks in the amount of \$12½
16 thousand each.

17 Q You quoted Mr. Lynch, that Mr.
18 Lynch had forgotten something or other. I forget
19 exactly what your testimony was. You are talking
20 about immediately after that or at least about that
21 time that the check was honored by the bank. You
22 were talking about a check. Which check are you
23 referring to of these two or three that you have
24 in mind?

25 A This happened on three occasions in a

2 Applied Logic

3 similar fashion, two or three occasions in a similar
4 fashion, the last one or the latest one being
5 December of 1974, and when I testified this morning
6 to that specific check, that was the check of
7 December 1974, which was a repeat performance, it
8 so happens, of an earlier question pertaining to
9 a check in the same amount of \$12½ thousand because
10 those were the payments by the lease agreement
11 that we had with Mr. Todd.

12 MR. LEBOW: If your Honor please,
13 my recollection of what Mr. Mobach said
14 when asked on how many occasions Mr. Lynch
15 telephone him he used the term a couple
16 or three times. I wanted to ask Mr. Mobach,
17 who is Dutch, how he ever learned that.

18 THE JUDGE: From listening to
19 football games.

20 Q Mr. Lynch, even though he is familiar
21 with Webster Todd still kept up these conversations
22 with you in reference to their subsequent checks
23 and the last of which was December 1974; is that
24 what you are saying?

25 A I am saying that two or three times he

2 Applied Logic

3 asked me about this or these specific checks in the
4 same amount of \$12½ thousand and his answer in
5 December of 1974 when he called me and I explained
6 it to him was yes, I remember, sure. That was it.

7 Q Incidentally, when was the last
8 Webster Todd check that we were talking about?
9 Was it December '74 or was it later in 1975 from
10 what you were telling me?

11 A December '74. The next check was paid in
12 June of 1975, not out of the New Jersey account.

13 Q Mr. Mobach, when you discussed the
14 check in the amount of \$35,000 which was to be
15 cleared through the account you mentioned some-
16 thing about early 1973. Would you tell us what
17 that check was?

18 A That check was a check from Grumman Data
19 Services for a memory box that they had purchased
20 from Applied Logic.

21 Q They had purchased from Applied
22 Logic?

23 A That's correct.

24 Q Would I be correct when I say
25 that the purpose of your telephone call to Mr.

2 Applied Logic

3 Lynch was to discuss with him the prospective sale
4 of that equipment?

5 A No. As I recollect it, Mr. Robinson, it
6 was because of not understanding what the check
7 was for but I explained to him this was for sale
8 of the equipment and that he therefore felt that
9 it should be applied against the \$100,000 loan
10 rather than put through the account. It was a
11 certified check.

12 Q If that be so, let me ask what
13 did you find so unusual about the telephone call
14 from Mr. Lynch?

15 A I don't think that I testified to it being
16 unusual. I was asked, as I recall, a question
17 on how many occasions did I get a call from Mr.
18 Lynch pertinent to some of the checking of the
19 account. As I remember, that is what I was trying
20 to answer.

21 Q You gave that as an example and
22 you now say there was nothing unusual about that
23 telephone call?

24 A As a matter of fact, I don't think that
25 even the call on Webster Todd was unusual in the

2 Applied Logic

3 light of the nature of the account.

4 When you supervise an account, you
5 expect questions like these and therefore, I would
6 not label them as unusual under that kind of a
7 setup.8 Q When you use the expression supervise
9 the account, what do you mean by the expression,
10 supervise the account?11 A New Jersey National Bank in one of the
12 meetings preceding the September 2, 1970 agreement
13 was selected as a representative of the banks to
14 monitor, supervise, whatever word you want to use,
15 to control the accounts.16 One of the discussions that brought
17 this about was if Applied Logic were to get -- were
18 to raise \$500,000 plus the \$750 that would be forth-
19 coming from the banks, are they going to go through
20 it again the way it happened prior to 1970.21 For this purpose New Jersey National
22 Bank was selected in a group, in a caucus of the
23 four banks while we had a creditors meeting and we
24 as a group including management of the company
25 were told that New Jersey National Bank was going

2 Applied Logic

3 to handle all the financial transactions and
4 monitor it.

5 Q Let me ask, did New Jersey National
6 fill this function as far as you are concerned?

7 A I think in the beginning, yes. I think
8 that the way that New Jersey National Bank handled
9 it in the beginning particularly subsequent to the
10 second agreement where another \$500,000 had to be
11 raised, that New Jersey National Bank dealt with
12 this problem in a very amicable way.

13 We even discussed the necessity
14 of initial checks because they went out which
15 would be an indication to the general trade creditors
16 that there is financially something wrong with the
17 company.

18 We tried to avoid, in other words --
19 and New Jersey National Bank was very cooperative
20 in this -- we tried to avoid the resemblance of
21 a company that is basically defunct to the outside
22 world.

23 Q Mr. Mobach, in order to achieve
24 all this, you used the general account of Applied
25 Logic Corporation; am I correct?

2 Applied Logic

3 A You say general account. I say it's a
4 guardian account, custodial account.

5 Q For this purpose did you set up
6 any other account besides the general account or
7 the account that had been started in 1968 by
8 Applied Logic?

9 A We didn't set up such an account but what
10 we could have done is close out one account and
11 start anew. I think it is normally a procedural
12 thing where if you have an account, you can design-
13 nate that account for different uses at the bank.

14 Q You could have. Did you set up
15 a special account for that purpose?

16 A No, because it was deemed not necessary.

17 Q Let me go to the \$60,000. We are
18 now talking about that CD that originally was
19 \$100,000, was then reduced to \$60,000.

20 Do you remember what we are talking
21 about now?'

22 A As far as the New Jersey sales tax?

23 Q Yes. Mr. Mobach, do you remember
24 how that particular transaction was handled with
25 the bank?

2 Applied Logic

3 A I remember in general terms how that trans-
4 action was handled.

5 Q Mr. Mobach, I really don't want
6 to be facetious but your memory has been pretty
7 good in other respects.

8 Could you tell me how that trans-
9 action was set up even in general terms?

10 A The transaction was set up that a CD of
11 \$100,000 was going to back up a bonding company
12 guaranty. The name of the bonding company escapes
13 me at the moment. It was in Connecticut somewhere.

14 Q If I gave you the name Aetna Life
15 and Casualty, would that be correct?

16 A Yes. It was subsequently in December of
17 1974 reduced to \$60,000 because only \$60,000 of
18 that \$100,000 CD was required for the bonding com-
19 pany and the \$40,000 was taken by New Jersey National
20 Bank as a set-off.

21 Mr. Teich, I believe, in a settle-
22 ment meeting, negotiations meeting that we had
23 with New Jersey National Bank, asked me to sign
24 the document after the set off for the \$60,000.

25 Q Did Mr. Teich handle all that

2 Applied Logic

3 with you?

4 A Mr. Teich was in a meeting with Mr. Lynch
5 after the acceleration in 1975. Since they had
6 set off the \$40,000 and they wanted to reinvest
7 it into a \$60,000 CD, I asked the question of the
8 bank as well as Mr. Teich how that could be because
9 we also had to accumulate \$100,000 to sign the
10 instrument as the back-up for the \$60,000 CD as
11 the backup for Aetna Life Insurance.

12 Q Mr. Mobach, we have the \$60,000 CD.
13 What was done with the \$60,000 CD?

14 A What was done with it?

15 Q Yes. I am going through the pro-
16 cedure. What happened to that \$60,000 or what was
17 the transaction? That is what I want to know.

18 A That CD remained with New Jersey National
19 Bank.

20 Q For what purpose?

21 A For the purpose to pay the taxes and at
22 that time we knew that the taxes would be -- if
23 New Jersey State were to prevail in litigation
24 with Applied Logic, we knew that we would have to
25 pay well in excess of \$60,000.

2 Applied Logic

3 \$60,000 happened to be the amount
4 the state claimed from the company through the
5 period of 1970.

6 Q Mr. Mobach, let me go through some
7 of the transactions. You gave to the Aetna Casualty
8 and Surety Company a letter of credit; am I correct
9 when I say that?

10 A Yes.

11 Q A letter of credit issued by the
12 New Jersey National Bank?

13 A I believe New Jersey National Bank issued
14 it because they felt it was the way to do it.

15 Q In the amount of \$60,000; am I
16 correct?

17 A Yes.

18 Q This was in connection with an appeal
19 bond. Would I be correct when I say that?

20 A It was the appeal bond with Aetna.

21 Q In connection with the bank giving
22 out this letter of credit for \$60,000, the bank --
23 and I specifically refer to Michael Lynch -- asked
24 you for some collateral, some security for that
25 \$60,000 of credit which was being given out to the

2 Applied Logic

3 Aetna Surety and Casualty Company; correct or not
4 correct?

5 A When you say asked, I don't think that part
6 is necessarily correct. In the total discussion
7 of how to handle this, the bank suggested that we
8 handle it this way to minimize again the expense
9 to the company because the bonding process was very
10 expensive and therefore, use \$100,000 CD that we
11 had with the bank to back up this \$60,000 of credit
12 to Aetna Casualty.

13 Q Was there any discussion between
14 you and Mr. Lynch or anyone else in the bank as
15 to the bank wanting some security, some collateral,
16 for putting up a \$60,000 letter of credit with
17 the Aetna Casualty and Surety Company?

18 A Other than the \$100,000 CD, no, sir.

19 Q They wanted the CD; is that correct,
20 as collateral security; right or wrong?

21 A I don't believe it was proposed in that
22 fashion at all. It was suggested that we use a
23 \$100,000 CD for that purpose.

24 Q I refer you to a previous date. Do
25 you remember a transaction involving IBM?

Applied Logic

A Yes.

Q Didn't you do a very similar thing
in regard to IBM?

A No. IBM was a different deal, a totally
different deal.

Q Was a letter of credit put up with --

A IBM when we entered into the recapitaliza-
tion agreement, it was still a trade account pay-
able of some \$87,000.

What we did, IBM requested a two
month repayment on rental for equipment. This was
handled also through New Jersey National Bank but
it had absolutely nothing to do with the bonding
company or anything of the kind.

Q Let me bring you up to date again.
We are now back to the same transaction involving
the state and the Aetna.

I show you this instrument and ask
you whether or not that is familiar to you?

A Yes, it is.

MR. ROBINSON: If your Honor
please, may I ask that it be marked.

THE JUDGE: Mr. Labow?

1 [54]

A-331

2 Applied Logic

3 MR. LEBOW: No objection.

4 THE JUDGE: Mark it as Plaintiff's
5 Exhibit 7 in evidence.

6 (Document above
7 referred to, was
8 marked as Plaintiff's
9 Exhibit 7 in evidence
as of this date.)

10 (Whereupon, a short recess was
11 taken and the proceedings were then resumed.)

12 Q Mr. Mobach, we were discussing this
13 assignment. It is labeled assignment of savings
14 account which has been marked as Plaintiff's
15 Exhibit 7.

16 Is there any question about the fact
17 that your signature shows up on that particular
instrument?

18 A There is no question about that. The only
19 thing that I question is --

20 Q Did you sign as an officer of
21 Applied Logic Corporation?

22 A That's correct. Although we didn't have
23 an assignment of savings account because we didn't
24 have a savings account.

25 Q In what capacity did you sign it?

2 Applied Logic

3 A As an officer of the company.

4 Q May I ask you, what is it actually
5 referring to? When I say that, didn't it refer to
6 a certificate of deposit, 240390?

7 A That's correct.

8 Q Bearing interest?

9 A I don't see that offhand.

10 Q A certificate of deposit, from your
11 testimony you took it out of the regular checking
12 account and put it into certificates of deposit
13 so you can earn interest?14 MR. LEBOW: I object to the form
15 of the question.16 He is assuming in the question
17 the ultimate answer as to whether it is
18 a regular account or whether it is some-
19 thing different.

20 THE JUDGE: Overruled.

21 MR. ROBINSON: I didn't use the
22 term regular account.23 MR. LEBOW: If you didn't, then
24 I apologize.

25 THE JUDGE: Read the question back.

2 Applied Logic

3 (The question was read back by
4 the reporter.)

5 A I believe that this was a new certificate
6 of deposit but I am not sure.

7 Q New or old certificate of deposit,
8 this certificate of deposit No. 240390 was put up
9 as collateral in reference to this transaction that
10 we were referring to just prior.

11 Am I correct or am I wrong, Mr.
12 Mobach?

13 A That is what the paper says.

14 Q In connection with that, you signed
15 this assignment whether it be labeled assignment
16 of savings account or whatever else it may be labeled?

17 A Yet I didn't see certificate of deposit
18 240390 physically.

19 Q Collateral to the extent of what
20 amount, do you remember?

21 A \$60,000.

22 Q Incidentally, that particular as-
23 signment form, have you seen it before as used by
24 the New Jersey National Bank in reference to other
25 transactions of Applied Logic Corporation with

2 Applied Logic

3 the bank?

4 A I may have.

5 Q Are you familiar with that particular
6 form?

7 A I am familiar with this form, yes.

8 Q I notice it has language in there,
9 "and shall also operate as security for payment
10 of any other debts or liabilities either directly
11 or indirectly of the undersigned to New Jersey
12 National Bank now in existence or hereafter contracted."13 A I see that. I would have no objection to
14 such language at all since we are dealing here with
15 monies that were deposited at New Jersey National
16 Bank to the benefit of the parties to the recapital-
17 ization agreement of September 15, 1971.18 As a matter of fact, the \$56,000
19 against which the bank has a lien although that
20 also has a note stating New Jersey National Bank
21 is really for three banks, New Jersey National
22 Bank, Chase Manhattan Bank and First National City
23 Bank.24 Q As long as you are on that particu-
25 lar subject, may I ask you, of all those banks you

2 Applied Logic

3 named which was the primary bank that you were
4 into?

5 A The New Jersey National Bank was the lead
6 bank.

7 Q If, for example, we took that
8 original \$1 million note, remember, referred to
9 in these agreements -- how much of that was for
10 New Jersey National's money?

11 A Fifty per cent of the \$1,300,000 was New
12 Jersey National.

13 Q What was the amount, do you remember?

14 A \$650,000.

15 Q Do you remember the date on that
16 exhibit 7?

17 A I see it before me here. It is November
18 1974.

19 Q Did you realize why you signed
20 that assignment at the time that it was signed?

21 A Yes, because I was asked by both Mr. Lynch
22 and Mr. Heher to sign it in order to keep a cer-
23 tificate of deposit in the exact amount that the
24 state had required and that Aetna Casualty had
25 put up a bond for.

2 Applied Logic

3 Q Incidentally, when you refer to
4 Mr. Heher, you are referring I presume to counsel
5 of Applied Logic Corporation?

6 A At that time.

7 Q That is what I am referring to.
8 Incidentally, Mr. Heher was very
9 familiar with the affairs of the corporation?

10 A Yes, he was.

11 Q As a matter of fact, Mr. Heher acted
12 as the secretary of the board of directors of the
13 corporation?

14 A That's correct.

15 Q Mr. Heher was the one that you
16 looked to for legal advice in those days in refer-
17 ence to the various transactions in which the
18 corporation was involved.

19 A Not primarily. Mr. Heher I looked for
20 advice from just for matters pertaining to New
21 Jersey. Other matters were handled by Coudert
22 Brothers.

23 Q At the time that this particular
24 exhibit was signed, was Mr. Heher present?

25 A I don't believe that this was executed

2 Applied Logic

3 with the parties who affixed their signature to
4 this at the same time.

5 Q Who signed as the secretary of the
6 corporation?

7 A Mr. Heher signed when I signed. He attested
8 to my signature. The other signature didn't occur
9 at the same time.

10 Q You had discussed this with Mr.
11 Heher prior to the time that he was to sign?

12 A That's right.

13 Q Incidentally, when we were talking
14 about the fifth account in the counterclaim which
15 was in the amount of \$26,095.76 plus interest of
16 \$2,952.07, we are referring to the balance of that
17 \$60,000 after the Division of Taxation of the State
18 of New Jersey was paid.

19 A After we struck a settlement with the State
20 of New Jersey and subsequently the State of New
21 Jersey was paid by the bank. I believe that that
22 payment was made by court order.

23 Q This balance after the State of
24 New Jersey was paid that we are involved with in
25 this fifth counterclaim that we are now discussing

Applied Logic

actually was the subject matter of that assignment

dated November 1, 1974?

THE JUDGE: The difference between

what Jersey got at the compromise and that

figure.

A I don't believe so.

THE JUDGE: You don't believe so?

A I believe that is subject to being repaid

to Applied Logic.

Q It is the subject matter of what

we are discussing to tie them in together. That

is all I am trying to do, Mr. Mcbach.

A If that is what you are trying to do, then

the answer is affirmative.

Q Incidentally, when we talk about

these CD's we understand the funds in that ac-

count -- I am not going to characterize it --

that account also invested in other things when

large sums were involved besides CD's?

I am particularly referring to

commercial paper or investment paper.

A If they were then it is done upon the in-

stigation of the bank and not upon the instigation

2 Applied Logic

3 of Applied Logic Corporation. It is entirely pos-
4 sible that there was a different type of CD or com-
5 mercial paper involved. All we were interested in
6 was the highest possible yield in interest.

7 Q Actually in effect you are telling
8 me you really don't know what the answer is to
9 what I am asking. Would I be correct when I say
10 that?

11 A If I go to the record, I could identify
12 possibly whether there was a CD. Offhand I couldn't.

13 MR. ROBINSON: If your Honor please,
14 could you bear with me just one second.

15 I have no further questions.

16 THE JUDGE: Mr. Lewbow?

17 REDIRECT EXAMINATION

18 BY MR. LEDOW:

19 Q Mr. Mobach, I think I have only
20 one line of questioning to ask you about.

21 In the exhibit which is before you,
22 Exhibit 7, I take it that the CD in the sum of
23 \$60,000 was a successor in interest to the CD's
24 or to the corporate paper that was deposited pur-
25 suant to the 1970 and 1971 agreements; is that

2 Applied Logic

3 correct? This was new money that you raised somehow?

4 A No. It was part of the money that was
5 raised before.6 Q You didn't provide any additional
7 collateral at that time to New Jersey National
8 Bank that is separate and distinct from a re-
9 alignment or a change of those CD's or corporate
10 papers?

11 A That's correct, we didn't.

12 MR. LEBOW: I have no further
13 questions, your Honor.

14 THE JUDGE: Thank you, sir.

15 (The witness was excused.)

16 THE JUDGE: Your next witness,
17 Mr. Lebow.18 MR. LEBOW: Your Honor, I only
19 have one other potential witness and that
20 potential witness --21 THE JUDGE: Right now, Mr. Lebow,
22 have you any further witnesses?23 MR. LEBOW: I have no further
24 witnesses at this time.

25 THE JUDGE: Mr. Robinson?

2 Applied Logic

3 MR. ROBINSON: Mr. Lynch, please.

4 - - -

5 M I C H A E L L Y N C H , called as a witness,
6 having been first duly sworn by the Judge,
7 was examined and testified as follows:

8 THE JUDGE: Give your name and
9 home address to the reporter.

10 THE WITNESS: Michael Lynch,
11 Sargeantsville, New Jersey.

12 DIRECT EXAMINATION

13 BY MR. ROBINSON:

14 Q Mr. Lynch, your occupation?

15 A I am a banker with New Jersey National Bank,
16 primarily in the area of lending.

17 Q How long have you been associated
18 with New Jersey National Bank?

19 A Since August of 1963.

20 Q I refer you specifically to an
21 account that has been the subject of this day
22 and I am referring to Applied Logic Corporation.

23 I assume your answer would be that
24 you are familiar with that account?

25 A Yes, I am.

2 Applied Logic

3 THE JUDGE: Incidentally, do I
4 have the same latitude in respect of Mr.
5 Lynch's testimony before Judge Herzog
6 back last June?

7 MR. LEBOW: So stipulated.

8 Q Sir, let me ask you whether or not
9 you are familiar with the circumstances under which
10 Applied Logic Corporation became an account of
11 New Jersey National Bank or whatever the bank may
12 have been called at that particular time?

13 A I am.

14 Q Would you briefly indicate to the
15 court what were those circumstances?

16 A At the time I was charged primarily with
17 doing new business work, Applied Logic appeared
18 on the reports as planning and building a new
19 building. Following up that lead I solicited the
20 account, contacted primarily Thomas Townsend who
21 is treasurer or financial vice-president. I am
22 not sure what his title was at that time, and
23 agreed to be one of their banks.

24 We supplied them with \$100,000
25 line of credit and they opened a general account

2 Applied Logic

3 with us.

4 Q I don't think we got the date or
5 the approximate date. If it would be of any value
6 to you we do have Exhibit 5 in evidence already.

7 If that would be of any value to you in giving your
8 answer --

9 A I would say that Mr. Mobach's answer was
10 correct. I believe it was in April of '68.

11 Q Sir, let me ask you in opening up
12 that account, did it involve a bank account?

13 A It was a checking account.

14 Q If I asked you what the number of
15 that checking account would be, would you know?

16 A The number was 320589.

17 Q The account that we have been deal-
18 ing with all day today, would you know the number
19 of that account?

20 A It is the same account, 3203589.

21 Q Has that account number ever changed?

22 A Not to my knowledge.

23 Q When that account was opened, that
24 checking account was opened, was there anything
25 unusual about the account?

2 Applied Logic

3 A No.

4 Q When I ask that, was it designated
5 special in any way whatsoever as of that particular
6 time?7 A To my knowledge there were no restrictions
8 on the account in any form.9 THE JUDGE: Are you still with
10 the bank?

11 A Yes, sir.

12 Q Mr. Lynch, may I ask you, what is
13 your capacity or office in the bank as of the
14 present time?

15 A I am executive vice-president.

16 Q Even as the executive vice-president
17 may I ask you have you been familiar with the
18 affairs of Applied Logic Corporation up to the
19 present time?20 A I have -- Applied Logic is the only account
21 I still handle.22 Q If I took you back to 1968 and even
23 up to the present time, has your association with
24 this account, Applied Logic Corporation, been
25 continuous or has there been interruptions in it?

2 Applied Logic

3 A It has been continuous.

4 Q Subsequent to the time that that
5 account was opened -- I am referring to the ac-
6 count by the number of which you gave us before --
7 has there ever been up to even the present date
8 any change in the nature of that account?9 A The only changes that I know of are changes
10 in signers.

11 Q Is the account still open?

12 A I would think that today it is closed.
13 I can't answer that question.14 Q Otherwise was there any change,
15 for example, in the designation of the account?

16 A No, sir.

17 THE JUDGE: We had evidence it
18 was zeroed out, didn't we?

19 MR. ROBINSON: Yes.

20 A I believe it was closed out.

21 Q If I referred you to other banking
22 services rendered by the bank or Applied Logic,
23 what would they have consisted of over that period
24 of time?

25 I am referring again from 1968

2 Applied Logic

3 when the account was established up to whenever it
4 was closed out.

5 A We made several loans, the last of which
6 was not repaid. I guess you could say as bankers
7 we advised management as a banker advises any
8 customer in that banker's area of expertise. We
9 provided some letter of credit facilities. I be-
10 lieve that is generally -- we probably did credit
11 checkings and that sort of thing.

12 Q Mr. Lynch, let me refer you spec-
13 ifically to CD's. We have heard discussion in
14 regard to CD's or certificates of deposit.

15 Were certificates taken out by
16 Applied Logic Corporation from the bank?

17 A Yes.

18 Q In reference to these CD's, what
19 was the procedure as far as you know for the
20 purchase of CD's?

21 A The CD's were purchased on telephone in-
22 structions from a member of the financial group
23 of Applied Logic to either Alice Houseman or Doris
24 Shankouski, both of whom handled these transactions
25 in our bank.

2 Applied Logic

3 The initial purchase of CD's was
4 instituted by the company. Then at each subsequent
5 maturity at the time the CD matured, the funds
6 from the maturing CD were deposited into the com-
7 pany's account and they were called and asked if
8 they wanted to reinvest.

9 Q Was any of this initiated by the
10 bank or was it action on the part of the respon-
11 sible officers of Applied Logic Corporation?

12 A It was actually on the part of the officers
13 of Applied Logic and in fact there were times
14 when the funds sat in the checking account for a
15 day or two because they didn't get back to us
16 right away as to what they wanted done with the
17 money.

18 Q Sir, I take you to the particular
19 CD that was mentioned as Exhibit 7, mentioned in
20 Exhibit 7.

21 May I ask in reference to that
22 particular CD which shows as 240390, was that
23 certificate different from any of the other cer-
24 tificates of deposit which Applied Logic was involved
25 with the bank?

2 Applied Logic

3 A Only after it was pledged.

4 Q So that we have no misunderstanding
5 as to what that transaction was, would you very
6 briefly just tell us what the transaction was in
7 regard to what you referred to as the pledging?8 A In order to not have to put up cash with
9 the state, Applied Logic had to put up a bond.
10 In order to get a bond, they had to get a letter
11 of credit. They asked us for the letter of credit
12 and we required collateral. The collateral re-
13 quirement would have been only \$60,000 but at the
14 time that this instrument was arranged a corporate
15 CD had to be \$100,000 or more. There were no cor-
16 porate savings accounts at that time.17 Therefore, in order -- if it had
18 been reduced to \$60,000, the rate earned by Applied
19 Logic would have been less, so they opted to
20 pledge the whole \$100,000.21 After it was pledged it was not
22 handled like other CD's because we -- it was our
23 collateral and we controlled it. We reinvested
24 it for them but we didn't put it back into the
25 checking account.

Applied Logic

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Again, may I ask were you the particular one in the bank that handled that transaction?

A No. I believe the transaction -- I laid down the conditions based on discussions with senior management but I believe the transaction was handled by Robert Dragon who is our international officer.

We handled all our letter of credit transactions through our international department.

Q We heard some testimony earlier with regard to what happened to the balance of the money that was represented by that particular CD.

Was the testimony correct that the bank did set it off --

A The \$40,000?

Q Yes.

A Yes. It has to be understood that this was established after we had accelerated our debt and we had told the company that they had to maintain their deposit level with us the same as at the time we accelerated.

Therefore, we set the \$40,000 off

2 Applied Logic

3 and we set everything else off.

4 Q Mr. Lynch, there has been some
5 testimony in regard to the date that you finally
6 made the set-off on that balance and it was a date
7 that came off March 27, 19 6, which was the date
8 of the petition for the Chapter XI proceedings.

9 A Are you talking about the final \$26,000?

10 Q I am, Mr. Lynch.

11 A At the time we made the set-off of \$40,000,
12 we had a \$60,000 liability. We therefore left
13 collateral equal to the liability which was \$60,000.
14 When our liability was reduced, we then applied
15 the balance because it was collateral for all
16 debts to our debts.

17 Q When you say it was collateral for
18 all debts, upon what are you relying?

19 A Based on the language of the assignment.

20 Q By the assignment you are again
21 referring to Exhibit 7?

22 A Yes.

23 Q Incidentally, we heard that you
24 at one time were a director of Applied Logic
25 Corporation?

2 Applied Logic

3 A That's correct.

4 Q Were the dates given by Mr. Moback
5 substantially correct?

6 A Yes.

7 Q May I ask, what was the reason,
8 if there was any reason that you know of that you
9 were a director of Applied Logic Corporation?10 A I was a director to represent the interests
11 of the New Jersey National Bank as a substantial
12 creditor of the company and secondarily to on a
13 reporting basis represent the interests of all
14 the banks.15 Q During this time were you also
16 participating in the activities of the company
17 as a bank manager?18 A With the exception of making credit decisions,
19 yes. At the time I became a director of the company,
20 other members of our staff made the credit decisions.

21 Q How about investment decisions?

22 A No, I was not making investment decisions
23 either. The company made its own investment de-
24 cisions. We offered them the alternatives.

25 Q Prior to the time that there was

2 Applied Logic

3 an acceleration of your obligation, may I ask
4 whether or not you controlled the account?

5 When I say the account, I am re-
6 ferring to the checking account, without character-
7 izing the nature of the same, of Applied Logic
8 that was held by New Jersey National Bank?

9 A The only control we exercised was if they
10 drew against uncollected funds -- there may have
11 been overdrafts because of the handling of items.
12 We asked questions about what we were paying be-
13 fore we paid them.

14 Q If I refer to the agreement that
15 is a part of Exhibit D and there is that language
16 in there in regard to that all banking was to be
17 at New Jersey National, if I may paraphrase what
18 the agreement indicated and we have been through
19 that already and may I ask whether that language
20 was in that agreement for any particular purpose
21 as far as you know?

22 A It was in there at the specific insistence
23 of our bank in order to provide ourselves with the
24 right of set-off.

25 MR. LEBOW: I move to strike that.

2 Applied Logic

3 THE JUDGE: I think the language
4 is clear. It is not ambiguous. I don't
5 see any latent ambiguity that would permit
6 this kind of evidence.

7 I will therefore strike the ques-
8 tion and the answer.

9 Q Any financial problems or any
10 financial transactions that were involved dealing
11 with Applied Logic Corporation? Did New Jersey
12 National deal with any other checking account ex-
13 cept the checking account that had been the subject
14 of discussion all day?

15 A No other one that I know of.

16 Q Mr. Lynch, I have heard the ex-
17 pression that the accountant was monitored. I
18 have also heard the expression that the account
19 had been supervised.

20 May I ask whether or not you under-
21 stood what those terms might be and if you do,
22 what would be your comment in reference to the
23 same?

24 MR. LEBOW: I object to the question
25 as to form.

2 Applied Logic

3 THE JUDGE: Overruled.

4 A I understand what Mr. Mobach said. As long
5 as the account -- prior to our acceleration, as
6 long as the account was a properly operating ac-
7 count, it was neither overdrawn or drawn against
8 uncollected unfds, it was not looked at and was
9 a normal account within our bank. At times when
10 we were required to pay overdrafts because of the
11 late deposits or because a deposit was hung up
12 in the mail or something similar to that or when
13 we were required to pay against uncollected funds
14 primarily because we had these large transactions
15 with renewals of CD's, etc., flowing in and out
16 of the account, we did look and see what we were
17 paying.

18 After we accelerated our debt, told
19 them of our intention to set off the account, they
20 asked us -- and I guess you could say we reached
21 an arrangement -- where we would not set off the
22 account temporarily.

23 We had stipulated although we
24 would not set it off they had to maintain a balance
25 in it, and then we looked at every check. We didn't

2 Applied Logic

3 want to see funds diverted. We were willing to
4 let them operate but we would not let them with-
5 draw money from the account either to establish
6 a relationship somewhere else or reduce our capital.

7 Q Incidentally, there was testimony
8 with regard to these monthly reports of accounts
9 receivable and accounts payable. I know that you
10 did make some comment to the court while not under
11 oath. May I ask whether or not your answer to the
12 court would be the same now?

13 I am putting this very briefly so
14 we can just have something in the record in regard
15 to the same.

16 A We did receive reports of accounts re-
17 ceivable as they were required under the agreement.
18 We in fact were required to supply copies of those
19 to the participating banks, First National City
20 and Chase Manhattan Bank.

21 I did call the company on occasion
22 about those reports because they were late at
23 times. I have no recollection of receiving reports
24 of accounts payable nor did I ever make any agree-
25 ment with the company that if I received such

2 Applied Logic

3 thing the accountant could operate freely.

4 Q To follow up what the court had asked
5 before, if your inspection and review of the bank
6 records should show otherwise, would you be in a
7 position to so notify the court?

8 A Yes.

9 Q Mr. Mobach had referred to Webster
10 Todd. May I ask whether or not you can very briefly
11 recall exactly what your understanding of those
12 transactions or transaction may have been?

13 A Mr. Mobach is correct, that I asked about
14 the checks. He is correct that Webster Todd is
15 the owner of the land and there were lease payments.
16 I think he is probably correct that I called him
17 twice. I doubt three times, although I am not
18 certain. It had to do -- evidently either with the
19 checks coming through after the acceleration at
20 which time we were questioning any checks we were
21 uncertain of and this probably was one or it had
22 to do with one of them coming through at a time when
23 the account was either uncollected or overdrawn and
24 it would be a large check to an individual and we
25 would therefore question it in that case.

2 Applied Logic

3 O An issue was also made in regard
4 to a \$35,000 transaction with Grahman, if I re-
5 member the name of the company.

6 Again, would you very briefly
7 describe what your --

8 A I have no recollection of holding up any
9 deposit. I am quite certain I told Martin specific-
10 ally that those funds had to be applied to the loan
11 since they arose from the liquidation of the col-
12 lateral of the loan. I have no recollection of
13 sitting on a deposit or holding a check.

14 I believe we probably had several
15 discussions of this matter and one of them might
16 have taken place before the sale and one after.
17 I know that I had to discuss it with the other
18 banks since there are two participants in that
19 loan and we agreed that we wanted any proceeds
20 of any collateral which was this check.

21 I believe that in fact there were
22 two checks, one from Grahman and one very small.
23 I believe there were two sales.

24 O We had introduced minutes of a
25 meeting, that was P-6 into evidence. In those

Applied Logic

minutes as was testified to and as the minutes

show, there was a comment made --

THE JUDGE: You have all the

Plaintiff's exhibits.

O -- there was a comment made that

the board authorized payment of creditors directly

instead of through a special account to expedite

the receipts by individual parties.

Do you recall being present at

that meeting? I notice that again the exhibit in-

dicates your name.

THE JUDGE: Did you attend the

meeting -- all directors meetings?

A I didn't attend all directors meetings.

According to these minutes I attended this one.

The only thing I can say is in all cases when I

received minutes I reviewed them for their cor-

rectness so I must have when I received these.

I can't say that I specifically remember being there.

O With reference to these set-offs

that have been mentioned earlier and have been

testified to, is there any question with regard

to the fact that the bank did exercise its rights

2 Applied Logic

3 of set-offs did take place as indicated in the
4 testimony?5 A There is no question in my mind that they
6 were proper set-offs.7 THE JUDGE: That is not the question.
8 The transactions and the amounts and the
9 time they took place.

10 A Yes.

11 THE JUDGE: What they are is
12 unfortunately my problem.

13 MR. ROBINSON: Your witness.

14 CROSS-EXAMINATION

15 BY MR. LEBOW:

16 Q Mr. Lynch, you mentioned or there
17 was mention a loan of \$650,000 that was extended
18 by New Jersey National Bank to Applied Logic Cor-
19 poration. Has that loan been paid back in full?

20 A No.

21 Q It has not been paid back in full?

22 A No.

23 Q What amount is outstanding on that
24 loan?

25 A I can't give you the exact figure. My guess

2 Applied Logic

3 would be in the neighborhood of \$45,000. I am
4 not exactly certain of that. If you take \$325,000
5 and net out what are called set-offs, you come up
6 with the balance on that loan.

7 Q Wasn't there another loan out-
8 standing from New Jersey National Bank to Applied
9 Logic Corporation?

10 A There were several loans.

11 Q Under the financing agreement, wasn't
12 that loan fully paid back, the loan mentioned in
13 the refinancing agreement?

14 A No. Unless we are talking about -- are
15 you talking about the loan secured by the individual
16 guarantors?

17 Q That's correct.

18 A I'm sorry. That loan is for Applied Logic
19 fully paid.

20 Q What was the amount of that loan?

21 A That loan was \$650,000.

22 Q There is another loan of \$325,000;
23 is that right?

24 A Which was originally \$650,000, yes, sir.

25 Q The total outstanding due upon that

2 Applied Logic

3 is approximately \$45,000 giving credit to all the
4 set-offs that you have taken?

5 A I believe that would be correct, yes.
6 There was another \$100,000.

7 Q Let's go back to the opening of
8 this account which Mr. Robinson asked you about.

9 Do you remember when the account
10 was originally opened that there were some personal
11 guarantees given to any balances in that account?
12 Would you remember that there were personal guaran-
13 tees from a number of principals of Applied Logic
14 in connection with that account?

15 A Applied Logic to --

16 Q I am talking about the original
17 account when it was first opened.

18 A There were no personal guarantees.

19 Q Do you recall anything about the
20 frequency of use of that account?

21 A No. It was seven years ago, eight years
22 ago.

23 Q Prior to your becoming a board
24 member of Applied Logic Corporation, were you a
25 member of its creditors committee?

2

Applied Logic

3

A I would have to decline -- say that I don't know that we had an official creditors committee. We had a group of interested creditors. I was a member of that group.

7

8

9

Q I believe you called yourself the finance committee, is that correct, or financing committee?

10

11

12

13

A You could be right, that that term was used. I don't remember anybody keeping minutes of meetings and so on. It is entirely possible that it is called a financing committee.

14

15

16

17

Q Immediately prior to the execution of the September 1970 agreement, do you remember participating in the discussions which led up to the execution of that agreement?

18

19

A Yes. It wasn't even executed on September 2nd, I don't think.

20

21

Q Do you remember participating in the discussion which led up to its execution?

22

A Sure.

23

24

25

Q In particular do you remember attending a meeting at the offices of First National City Bank?

2 Applied Logic

3 A There was at least one meeting there, yes.

4 Q Do you remember that the discussion
5 came up at that meeting, at which you were present,
6 with respect to who was to be the bank at which
7 the exclusive banking activities of Applied Logic
8 would be conducted?

9 A I wouldn't characterize it that way.

10 Q Do you remember the Chase Manhattan
11 Bank wished to have that role for itself?

12 A No.

13 Q They never said that to you?

14 A I don't remember it, no.

15 Q Do you remember that the meeting
16 decided that there would be one bank at which the
17 exclusive banking activities of Applied Logic
18 Corporation would be conducted at?

19 A Yes.

20 Q That bank was New Jersey National
21 Bank, wasn't it?

22 A Yes.

23 Q That was agreed to by First National
24 City Bank and Chase Manhattan Bank, wasn't it?

25 A Yes.

2 Applied Logic

3 Q Although I suggest to you that
4 Chase Manhattan Bank thought at least for a while
5 to the contrary, but that doesn't refresh your
6 recollection, I take it?

7 A The only thing I know is our position when
8 we are putting in the most money and therefore
9 they were going to bank with us.

10 Q Pursuant to those discussions more
11 money was put into Applied Logic, wasn't it?

12 A Yes.

13 Q At that session you offered to
14 report to the other banks, didn't you?

15 A We decided that the new money would be put
16 in on a participation basis, we would be the lead-
17 ing bank and therefore I would report, yes.

18 Q There were also other people who
19 were present at that meeting?

20 A Sure.

21 Q These consisted, among others, of
22 equipment lessors?

23 A Yes.

24 Q Don't you recall in particular one
25 individual specifically asking you about the issue

2 Applied Logic

3 of set-off at that meeting and don't you recall
4 your response that set-off would not be permitted?

5 A No.

6 Q You don't recall any such thing?

7 A No.

8 Q Prior to September of 1971 --

9 A Let me come back. No, I will clarify it
10 for you.

11 Q Prior to September of --

12 A Do you want me to clarify the question?

13 Q Maybe your counsel can do that
14 for you.

15 In September of 1971 and prior
16 thereto, namely prior to the execution of the
17 recapitalization agreement, do you remember any
18 CD's being taken out by Applied Logic Corporation
19 with New Jersey National Bank?

20 A Without getting back that chart of the
21 CD's which is evidence for the plaintiff, I can't
22 tell you when they started buying CD's. I was not
23 involved with the purchase of it.

24 Q I believe that you will see that
25 that chart starts in 1972. I take it if that chart

2 Applied Logic

3 does start in 1972 --

4 A That is when they start. They start in
5 January of '72.6 THE JUDGE: Exhibit 4 if I am
7 not mistaken. Yes.8 Q At any other time since the open-
9 ing of the account has any other account separate
10 from the account that we have been talking about
11 today been opened by Applied Logic Corporation at
12 New Jersey National Bank?

13 A Not that I know of.

14 Q Do you remember ever having a dis-
15 cussion with Mr. Mobach about the procedures that
16 would be followed with respect to implementing
17 the 1970 and 1971 agreements?18 A Other than discussions about what agree-
19 ments said, no.20 Q Did you ever ask him to change
21 the designation of the account?

22 A No.

23 Q When these CD's which appear on
24 the chart which has just been shown to you were
25 acquired, in whose name do the books and records

2 Applied Logic

3
4 of New Jersey National Bank reflect that the owner
5 of these CD's?

6 A Applied Logic Corporation.

7 Q U take it that they did that through-
8 out the time that the CD's were bought?

9 A Yes.

10 Q That even includes the CD that
11 was used to collateralize New Jersey State sales
12 tax?

13 A Yes.

14 Q When the certificate of deposit
15 in the name of Applied Logic was set off on or
16 about April 1, 1976, and the \$26,095.76 was applied
17 by you, to which particular loan was that applied?18 A It was applied to the balance of the
19 \$325,000 unsecured loan.20 Q On the reporting requirements that
21 we were talking about, when you received the ac-
22 counts receivable aging and possibly the accounts
23 payable, if you did receive them, what, if any-
24 thing, did you do with them?25 A When I received a copy of the accounts
receivable aging, I mailed -- I sent one copy to

2 Applied Logic

3 my credit department and I mailed copies to the
4 officers in Chase Manhattan Bank and First National
5 City that were handling the Applied Logic account
6 there.

7 Q From time to time did the equip-
8 ment lessors request any information from you?

9 A I don't believe so.

10 Q You didn't regularly report to the
11 other parties?

12 A No, I reported only to the participating
13 banks because the accounts receivable related
14 to collateral on their loan.

15 Q You said, Mr. Lynch, that you spoke
16 to Mr. Mobach several times about collections
17 drawn to the order of Webster Todd; is that correct?

18 A I said it probably was.

19 Q You said that you also inquired
20 about a certain deposit that was sought to be
21 placed into the general account representing a
22 certified check from Groman Data Services; is that
23 correct?

24 A I said that I discussed the transaction.
25 I don't have any recollection of holding up the

Applied Logic

deposit so that it could not be made.

Q When did you become executive vice-president of the bank?

A July 1974.

Q I take it that that is probably the number two or three operating officer in the bank?

A At that time there were three executive vice-presidents, a president and a chairman and a vice-chairman who is not salaried.

Q What are the total assets of the bank?

A Approximately \$800 million.

Q How many officers do you have?

A Thirty-three.

Q Are you the largest bank in New Jersey?

A No.

Q What number are you in New Jersey in terms of assets?

A Fifth or sixth.

Q Mr. Lynch, is it your testimony that the only reason why you called Mr. Mobach

2 Applied Logic

3 about the Webster Todd checks was because as you
4 recall the account may have been overdrawn or be-
5 cause there were uncollected funds upon which
6 the check was drawn?

7 A That would have been the only reason for
8 calling him prior to our acceleration of the debt.
9 After that we called on any unusual items, and I
10 think Martin is correct, I have forgotten who
11 Webster Todd was although I should know the name
12 very well and therefore called him.

13 Q Why would you call him about un-
14 collected funds after you had \$4,000 worth of
15 certificates of deposit?

16 A At that time we didn't have any real way
17 of setting off anything. Someone could have come
18 in and taken the CD's and they would have been
19 gone. We had no way of holding the CD's until
20 we accelerated our debt.

21 Q Do you have any bank statements
22 which indicate that the funds remained in Applied
23 Logic Corporation's account for several days?

24 A What funds?

25 Q Wasn't it procedure to automatically

2

Applied Logic

3

roll over the CD's?

4

A No. The procedure was to put them back into the account and ask the company what they wanted to do.

7

8

9

10

11

12

13

Q Here is a company which is hopelessly insolvent since 1971 and it has \$500,000 worth of CD's in your bank and you are telling me that you put in money into their account and if they wanted to, despite the existence of Exhibit D, these two agreements, you would let them take it out?

14

A I couldn't stop them.

15

16

Q You were ready to clarify the subject of set-off. You were stopped.

17

18

Is there anything that you want to --

19

20

21

22

A I think there was a discussion. It is a little fuzzy. I think the concern evidenced by some of the other creditors was that the additional capital would be deposited in the bank.

23

24

25

The capital that was required under the agreement and the day after it was deposited it would be set off.

2 Applied Logic

3 I told them that if the agreement
4 was put together and signed and we didn't have a
5 past due note at that time, we had no way to set
6 off. So whether we wanted to or not we couldn't.

7 MR. LEBOW: I have no further
8 questions.

9 MR. ROBINSON: Your Honor, just
10 one more.

11 BY MR. ROBINSON:

12 Q Do you recall that Mr. Mobach
13 asked you at one time to move the certificates
14 of deposit to Chase Manhattan where a higher rate
15 of interest could be obtained?

16 A I recall we were asked to move the certif-
17 icates after we accelerated the debt and we re-
18 fused. As to whether it was Chase Manhattan ,
19 I don't recall that.

20 Q Do you remember that was, sir?

21 A After the acceleration date. Prior to
22 that the funds had moved around. They had bought
23 commercial paper. I don't know if they ever bought
24 any other CD's. I am not certain about that. The
25 funds had been out of our possession at times prior

1 [96]

A-373

2

Applied Logic

3

to that. After the acceleration we refused to

4

do it.

5

Q When did Mr. Mobach make this re-

6

quest, if you remember?

7

A Specifically I don't remember.

8

MR. ROBINSON: I have no further

9

questions.

10

11

- - -

12

13

14

15

16

17

18

19

20

21

22

23

24

25

RAYVID REPORTING SERVICE

150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

1 [97]

A-374

2

I N D E X

3

4

WITNESSES

P A G E

5

Marvin Mobach

2

6

Michael Lynch

64

7

8

9

10

11

E X H I B I T S

12

13

PLAINTIFF'S IN
EVIDENCE

14

15

6

Copy of minutes of board
of directors meeting held
on August 29, 1972.

19

16

17

7

Document.

54

18

19

20

21

22

23

24

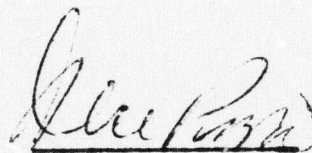
25

2 C E R T I F I C A T E

3
4 I, ALICE PIZZO, a Shorthand
5 Reporter and Notary Public of the State
6 of New York, do hereby certify:

7
8 That Marvin Mobach and Michael
9 Lynch, witnesses whose examinations are
10 hereinbefore set forth, were duly sworn
11 and that such examinations are a true
12 record of the testimony given by such
13 witnesses.

14
15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage; and that
18 I am in no way interested in the out-
19 come of this matter.

20 
21
22
23
24
25

PLAINTIFF'S EXHIBITS IN EVIDENCE

- No. 1 - Promissory Note dated May 25, 1971 in amount of \$100,000 executed by ALC in favor of New Jersey National Bank with attachments (heretofore reproduced at pages A-27 through A-30).
- No. 2 - Security Agreement dated May 25, 1971 between ALC and New Jersey National Bank with attached schedule (heretofore reproduced at pages A-32 through A-38).

PLAINTIFF'S EXHIBIT NO. 3 IN EVIDENCE

Financing Statements filed June 1, 1977
by New Jersey National Bank against ALC
covering described collateral, with at-
tached Schedule A.

(Pages A-378 through A-389 following)

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

Maturity date
(if any):

1. Debtor(s) Name (Last Name First if individual):

APPLIED LOGIC CORPORATION

2. Debtor(s) Complete Address(es):

1 Palmer Square
Princeton, New JerseyThis Space for use of Filing Officer.
(Date, Time, File Number and Filing Office)THE SPACES TO THE RIGHT
HAVE BEEN DESIGNED FOR
USE IN A WINDOW ENVELOPE
WHEN RETURNING THE SECOND
COPY TO THE PERSON FILING.

3. Secured Party(s) Name and Complete Address(es):

MAIL TO:
New Jersey National Bank
One West State Street
Trenton, New Jersey
Attn: Michael S. Lynch

4. Assignee(s) of Secured Party(s) Name and Complete Address(es):

5. This financing statement covers the following types (or items) of property: (Describe. If space inadequate continue on sheets 8 1/2" x 11")

All unencumbered assets, including specifically:
Fixtures and equipment as listed on Schedule "A3", attached.
All inventory now owned and after acquired inventory.
All accounts receivable now existing or arising hereafter.
All notes receivable, as listed on Exhibit #1, attached.Location of collateral: 7316 Wisconsin Avenue
Suite 303
Bethesda, Maryland 20014This Financing Statement is not subject to a Recordation Tax.

CHECK (X) THE ITEMS WHICH APPLY:

() (If collateral is crops). The above described crops are growing or are to be grown on: (Description of real estate and name and address of record owner.)

() (If collateral is goods which are or are to become fixtures). The above described goods are affixed or are to be affixed to: (Description of real estate and name and address of record owner.)

7. (X) PROCEEDS of Collateral are also covered.

8. (X) PRODUCTS of Collateral are also covered.

No. of additional sheets presented (4)

9. (X) Filed with: County Recording Officer of Montgomery County, Maryland

() Secretary of State.

This statement of termination of financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that he no longer claims a security interest under the financing statement bearing the above file number.

TERMINATION STATEMENT

Dated: _____

19 _____

(Signature of Secured Party(s) or Assignee(s) of Record — Not Valid until signed)

FILING OFFICER'S COPY—ACKNOWLEDGMENT — Filing Officer is requested to note file number, date and hour of filing on this copy and return it to the person filing, as an acknowledgment.
FORM UCC-1 STANDARD FORM — UNIFORM COMMERCIAL CODEALL-STATE OFFICE SUPPLY CO.
49 EDISON PLACE • NEWARK 2, N. J.

49 EDISON PLACE • NEWARK 2, N. J.

FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

Maturity date
(if any)This Space for use of Filing Officer.
(Date, Time, File Number and Filing Office)

1. Debtor(s) Name (Last Name First if Individual):

APPLIED LOGIC CORPORATION

2. Debtor(s) Complete Address(es):

1 Palmer Square
Princeton, New Jersey

3. Secured Party(s) Name and Complete Address(es):

MAIL TO:
New Jersey National Bank
One West State Street
Trenton, New Jersey
Attn: Michael S. Lynch

4. Assignee(s) of Secured Party(s) Name and Complete Address(es):

THE SPACES TO THE RIGHT
HAVE BEEN DESIGNED FOR
USE IN A WINDOW ENVELOPE
WHEN RETURNING THE SECOND
COPY TO THE PERSON FILING.

5. This financing statement covers the following types (or items) of property: (Describe. If space inadequate continue on sheets 8 1/2" x 11")

All unencumbered assets, including specifically:
Fixtures and equipment as listed on Schedule "A2", attached.
All inventory now owned and after acquired inventory.
All accounts receivable now existing or arising hereafter.
All notes receivable, as listed on Exhibit #1, attached.Location of collateral: 7316 Wisconsin Avenue
Suite 303
Bethesda, Maryland 20014This Financing Statement is not subject to a Recordation Tax.

CHECK (X) THE ITEMS WHICH APPLY

6. () (If collateral is crops. The above described crops are growing or are to be grown on: (Description of real estate and name and address of record owner.)) (If collateral is goods which are or are to become fixtures. The above describe goods are affixed or are to be affixed to: (Description of real estate and name and address of record owner.)

7. (X) PROCEEDS of Collateral are also covered.

8. (X) PRODUCTS of Collateral are also covered.

No. of additional sheets presented (4)

9. (X) Filed with: County Recording Officer of Montgomery County, Recorder of Deeds of the District of Columbia, and Secretary of State.

Signature(s) of Debtor(s)

APPLIED LOGIC CORPORATION

BY: Martin T. Mobach

Signature(s) of Secured Party(s) or Assignee(s)

NEW JERSEY NATIONAL BANK

BY: [Signature]

SECURED PARTY'S COPY — This form of financing statement is approved by the Secretary of State of New Jersey.
FORM UCC-1 STANDARD FORM — UNIFORM COMMERCIAL CODETHESE FORMS MAY BE PURCHASED FROM:
ALL-STATE OFFICE SUPPLY CO.
49 EDISON PLACE • NEWARK 2, N. J.

JUN-30-71	1509 05 1	CLK. CY. H.O.	FS BCK	\$	16.00
CLERK'S OFFICE MONTG. CO., MD.					
JUN 30 PM 1:45					
JUN-30-71	1509 05 1	CLK. CY. H.O.	FS BCK	\$	16.00

1. Doctor(s) Name (Last Name First)

2. Debtor(s) Complete Address

This space for use of Filing Office.
(Date, Time, File Number and Filing Office)

3. & 4. Secured Party(ies) and Complete Address

THE SPACES TO THE RIGHT
HAVE BEEN DESIGNED FOR
USE IN A WINDOW ENVELOPE
WHEN RETURNING THE SECOND
COPY TO THE PERSON FILING.

5. & 6. Assignee(s) of Secured Party and Complete Address

ORIGINAL ENDORS
FILED

OCT 2 1970

COUNTY CLERK

#6039

7. This financing statement covers the following types (or items) of property:

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE IN ACCORDANCE WITH THE ACCOUNTS
OF THE BUREAU OF INVESTIGATION, AND IS BEING RELEASED TO THE PUBLIC IN ACCORDANCE WITH THE SCHEDULED RELEASE OF
THE RECORDS.

Collateral set forth in Schedule "A" attached hereto.

8. When collateral is crops or fixtures complete this portion of form.

a. Description of real estate (Sufficient to identify the property).

b. Name and complete address of record owner.

• 9a. (X) Proceeds of Collateral are also covered. 9b. (X) Products of Collateral are also covered.

No. of additional sheets presented. (10)

() Filed with Register of Deeds and Mortgages of

County. (X) Secretary of State.

Filed with the County Clerk of Somerset and Mercer

County,

Signature(s) of Debtor(s)
APPLIED LOGIC CORPORATION

Signature(s) of Secured Party(ies) or Assignee(s)
NEW JERSEY NATIONAL BANK

By: Martin J. Ingham chairman of the Board and

By: James E. Smith J.E.S. 10/10/06

By: Hum Helen L. sig. etuy

by: Michael S. Lynch, Vice President

SECT. 9-402

- This form of financing statement is approved by the Secretary of State of New Jersey.

CC36-1 11/63

Schedule A

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
6	MA10	Core Memories	197, 187, 139, 194, 207, & 193
3	KA10	Arithmetic Processors	111, 105, 117
3	KM10	Fast Registers	111, 105, 117
3	KT10A	Dual Memory Protectors	111, 105, 117
1	MA10	Core Memories	152
1	KT10A	KT10 Update Modification	5
100	PDP-10	Reference Cards	NONE
10	PDP-10	Interface Manuals	NONE
18	PDP-10	Reference Handbooks	NONE
2	MC10	Add Memory Processors	NONE
2		Auto Tape Controllers	NONE

(continued)

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
1	* PDP-8	Central Processor	1491
6	PDP-8/680	Central Processors	1490, 1233, 1303, 141 1493, 1471
7	ASR-33	Teletypes	202848, 210145, 2100 202834, 202835, 201 210089
6	681	Serial Line Adapters	127, 60, 122, 121, 11 118
6	685	Serial Line Multiplexers	114, 113, 118, 115, 10 60
8	689M	Panels	136, 134, 133, 137, 1 149, 142, 145
6	Cab 8I	Cabinets	NONE
7	Cab 8B	Cabinets	NONE
384	W750	Teletype Line Units	NONE
288	689MI	Modem Interface Adapters	NONE
4	689MA	Modem Interface Adapters	109, 140, 123, 137
1	PDP-8	Software Kit (write-ups & tapes)	NONE
1	74-05668	Indicator Panel #2	NONE
1	74-5534	Cover Retainer	NONE

*Notwithstanding the provisions of Sec. 3 of the agreement to which this Schedule A is made a part, it is stipulated that Serial #1491 PDP-8 Processor has been and will continue to be used by ALC in connection with development of a new type communications processor.

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

Maturity date (if any):

1. Debtor(s) Name (Last Name First)

APPLIED LOGIC CORPORATION

2. Debtor(s) Complete Address

1 Palmer Square
Princeton, New JerseyThis space for use of Filing Officer.
(Date, Time, File Number and Filing Office)

THE SPACES TO THE RIGHT
HAVE BEEN DESIGNED FOR
USE IN A WINDOW ENVELOPE
WHEN RETURNING THE SECOND
COPY TO THE PERSON FILING.

3. & 4. Secured Party(ies) and Complete Address

NEW JERSEY NATIONAL BANK
1 West State St.
Trenton, New Jersey

5. & 6. Assignee(s) of Secured Party and Complete Address

7. This financing statement covers the following types (or items) of property:

ALL RIGHTS AND INTERESTS IN ALL REAL AND PERSONAL PROPERTY OF APPLIED LOGIC CORPORATION, INCLUDING BUT NOT LIMITED TO, THE RIGHT OF FIRST REFUSAL, IN ACCORDANCE WITH THE ACCOUNTS RECEIVABLE AGREEMENT, TOGETHER WITH ALL OTHER RIGHTS SET FORTH IN SCHEDULE "A" ATTACHED HERETO.

Collateral set forth in Schedule "A" attached hereto.

Original FILED
#4145
OCT 2 2 45 PM 1970
L. R. OLSON, CLERK

8. When collateral is crops or fixtures complete this portion of form.

a. Description of real estate (Sufficient to identify the property).

b. Name and complete address of record owner.

9a. (X) Proceeds of Collateral are also covered. 9b. (X) Products of Collateral are also covered.

No. of additional sheets presented. (19)

(X) Filed with Register of Deeds and Mortgages of

County. (X) Secretary of State.

(X) Filed with the County Clerk of Somerset and Mercer County.

Signature(s) of Debtor(s)
APPLIED LOGIC CORPORATIONSignature(s) of Secured Party(ies) or Assignee(s)
NEW JERSEY NATIONAL BANKBy: Michael S. LynchBy: Michael S. LynchBy: Michael S. Lynchby: Michael S. Lynch
Michael S. Lynch, Vice President

SECT. 9-402

- This form of financing statement is approved by the Secretary of State of New Jersey.

CC361 11/70

Schedule A

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
6	MA10	Core Memories.	197, 187, 139, 194, 207, & 193
3	KA10	Arithmetic Processors	111, 105, 117
3	KM10	Fast Registers	111, 105, 117
3	KT10A	Dual Memory Protectors	111, 105, 117
1	MA10	Core Memories	152
1	KT10A	KT10 Update Modification	5
100	PDP-10	Reference Cards	NONE
10	PDP-10	Interface Manuals	NONE
18	PDP-10	Reference Handbooks	NONE
2	MC10	Add Memory Processors	NONE
2		Auto Tape Controllers	NONE

(continued)

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
1	* PDP-8	Central Processor	1491
6	PDP-8/680	Central Processors	1490, 1233, 1303, 141 1493, 1471
7	ASR-33	Teletypes	202848, 210145, 210 202834, 202835, 20 210089
6	681	Serial Line Adapters	127, 60, 122, 121, 11 118
6	685	Serial Line Multiplexers	114, 113, 118, 115, 1 60
8	689M	Panels	136, 134, 133, 137, 1 149, 142, 145
6	Cab 8I	Cabinets	NONE
7	Cab 8B	Cabinets	NONE
384	W750	Teletype Line Units	NONE
288	689MI	Modem Interface Adapters	NONE
4	689MA	Modem Interface Adapters	109, 140, 123, 137
1	PDP-8	Software Kit (write-ups & tapes)	NONE
1	74-05668	Indicator Panel #2	NONE
1	74-5534	Cover Retainer	NONE

*Notwithstanding the provisions of Sec. 3 of the agreement to which this Schedule A is made a part, it is stipulated that Serial #1491 PDP-8 Processor has been and will continue to be used by ALC in connection with development of a new type communications processor.

FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

Maturity date (if any):

Debtor(s) Name (Last Name First)

APPLIED LOGIC CORPORATION

2. Debtor(s) Complete Address

1 Palmer Square
Princeton, New JerseyThis space for use of Filing Officer.
(Date, Time, File Number and Filing Office)

3. & 4. Secured Party(ies) and Complete Address

NEW JERSEY NATIONAL BANK
1 West State St.
Trenton, New Jersey

5. & 6. Assignee(s) of Secured Party and Complete Address

THE SPACES TO THE RIGHT
HAVE BEEN DESIGNED FOR
USE IN A WINDOW ENVELOPE
WHEN RETURNING THE SECOND
COPY TO THE PERSON FILING.

3.00

239,040

7. This financing statement covers the following types (or items) of property:

~~ACCOUNTS RECEIVABLE, INVENTORY, EQUIPMENT, AND OTHER ASSETS OF APPLIED LOGIC CORPORATION, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: SCHEDULE "A" ATTACHED HERETO.~~

Collateral set forth in Schedule "A" attached hereto.

RECEIVED
SECRETARY OF STATE
UNIFORM COMMERCIAL
CODE SECTION

'70 SEP 30 PM 3:59

STATE OF NEW JERSEY

8. When collateral is crops or fixtures complete this portion a
a. Description of real estate (Sufficient to identify the pro

b. Name and complete address of record owner.

9a. (X) Proceeds of Collateral are also covered. 9b. (X) Products of Collateral are also covered.

No. of additional sheets presented. 1

(X) Filed with Register of Deeds and Mortgages of

County. (X) Secretary of State.

(X) Filed with the County Clerk of Somerset and Mercer

County.

Signature(s) of Debtor(s)

APPLIED LOGIC CORPORATION

Signature(s) of Secured Party(ies) or Assignee(s)
NEW JERSEY NATIONAL BANKBy: [Signature]By: [Signature]By: [Signature]by: [Signature]
Michael S. Lynch, Vice President

SECT. 9-402

- This form of financing statement is approved by the Secretary of State of New Jersey.

CC-364 11/68

Schedule A

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
6	MA10	Core Memories.	197, 187, 139, 194, 207, & 193
3	KA10	Arithmetic Processors	111, 105, 117
3	KM10	Fast Registers	111, 105, 117
3	KT10A	Dual Memory Protectors	111, 105, 117
1	MA10	Core Memories	152
1	KT10A	KT10 Update Modification	5
100	PDP-10	Reference Cards	NONE
10	PDP-10	Interface Manuals	NONE
18	PDP-10	Reference Handbooks	NONE
2	MC10	Add Memory Processors	NONE
2		Auto Tape Controllers	NONE

(continued)

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
1	* PDP-8	Central Processor	1491
6	PDP-8/680	Central Processors	1490,1233,1303,1414 1493,1471
7	ASR-33	Teletypes	202848,210145,21002 202834,202835,20175 210089
6	681	Serial Line Adapters	127,60,122,121,119, 118
6	685	Serial Line Multiplexers	114,113,118,115,109 60
8	689M	Panels	136,134,133,137,141 149,142,145
6	Cab 8I	Cabinets	NONE
7	Cab 8B	Cabinets	NONE
384	W750	Teletype Line Units	NONE
288	689MI	Modem Interface Adapters	NONE
4	689MA	Modem Interface Adapters	109,140,123,137
1	PDP-8	Software Kit (write-ups & tapes)	NONE
1	74-05668	Indicator Panel #2	NONE
1	74-5534	Cover Retainer	NONE

*Notwithstanding the provisions of Sec. 3 of the agreement to which this Schedule A is made a part, it is stipulated that Serial #1491 PDP-8 Processor has been and will continue to be used by ALC in connection with development of a new type communications processor.

PLAINTIFF'S EXHIBIT NO. 4 IN EVIDENCE

List showing purchases of certificates
of deposit by ALC

DATE ISSUED	DATE OF PURCHASE	AMOUNT	CERTIFICATE NO.	TO
1-21-72	100,000 N	100,000	70	8-25-72
8-25-72	100,000 N	200,000	71	9-15-72
9-25-72	100,000 R	200,000	72	10-25-72
10-25-72	100,000 R	200,000	73	11-13-72
11-13-72	100,000 N	300,000	74	11-14-72
11-24-72	100,000 R	300,000	75	11-26-72
12-26-72	100,000 R	300,000	76	1-25-73
1-25-73	100,000 R	300,000	77	
1-25-73	100,000 R	300,000	78	2-4-73
2-9-73	100,000 N	400,000	79	3-12-73
3-12-73	100,000 R	400,000	80	3-13-73
3-13-73	100,000 R	400,000	81	4-11-73
4-11-73	100,000 R	400,000	82	4-25-73
4-25-73	100,000 R	400,000	83	5-11-73
5-11-73	100,000 R	400,000	84	5-25-73
5-25-73	100,000 R	400,000	85	6-11-73
6-11-73	200,000 R	400,000	86	6-25-73
6-25-73	100,000 R	400,000	87	7-11-73
7-11-73	200,000 R	400,000	88	7-24-73
7-24-73	100,000 R	400,000	89	7-25-73
7-25-73	100,000 R	400,000	90	7-30-73
7-30-73	100,000 N	500,000	91	8-13-73
8-13-73	200,000 R	500,000	92	8-24-73
8-24-73	200,000 R	500,000	93	8-24-73
8-24-73	100,000 R			
	100,000 R	400,000		9-12-73
9-12-73	200,000 R	400,000		9-21-73
9-21-73	100,000 N	500,000		9-24-73
9-24-73	100,000 R	500,000		
	100,000 R	500,000		9-28-73
9-28-73	100,000 N	600,000		10-12-73
10-12-73	100,000 R	500,000		10-24-73
10-24-73	300,000 R	500,000		10-24-73
10-24-73	100,000 R	500,000		11-12-73

DATE ISSUED

ISSUED TO

DATE OF PURCHASE

AMOUNT

CERTIFICATE NO.

TO

NUMBER NAME OR SUBJECT

Plaintiff's Exhibit No. 4 (Cont'd.)

NUMBER NAME OR SUBJECT	DATE OF LETTERS	ISSUED TO	DATE ISSUED
11-12-73	100,000 R 500,000	TO 11-21-74	
11-21-73	100,000 PWD 400,000	TO 1-7-74	
1-7-74	100,000 R 400,000 100,000 PWD 300,000	TO 1-25-74	
1-25-74	100,000 R 300,000 100,000 PWD 400,000	TO 3-7-74	
3-7-74	100,000 R 400,000	TO 3-21-74	
3-21-74	100,000 PWD 300,000	TO 3-22-74	
3-22-74	200,000 R 300,000	TO 5-2-74	
5-2-74	100,000 R 100,000 PWD 200,000	TO 5-3-74	
5-3-74	100,000 R 400,000	TO 5-24-74	
5-24-74	100,000 R 300,000	TO 6-13-74	
6-13-74	100,000 R 300,000	TO 6-28-74	
6-28-74	100,000 R 300,000	TO 7-1-74	
7-1-74	100,000 R 400,000	TO 7-25-74	
7-25-74	100,000 R 300,000	TO 8-8-74	
8-8-74	100,000 R 300,000	TO 8-29-74	
8-29-74	100,000 R 400,000 100,000 R 300,000	TO 9-9-74	
9-9-74	100,000 R 300,000	TO 9-30-74	
9-30-74	100,000 R 300,000	TO 10-9-74	
10-9-74	100,000 R 400,000	TO 10-29-74	
10-29-74	100,000 R 300,000	TO 10-30-74	
10-30-74	100,000 R 300,000	TO 11-8-74	
11-8-74	100,791.67 R 300,791.67	TO 12-30-74	
12-30-74	60,000 R 400,000 40,000 PWD 260,791.67	TO 11-29-75	
11-29-75	100,000 PWD 160,791.67	TO 12-9-75	
12-9-75	100,791.67 PWD 60,000		
Exhibit in EVID. C2			
JUN 16 1975			
OVER			

PLAINTIFF'S EXHIBIT NO. 5 IN EVIDENCE

Signature cards signed by officer of
ALC for Account held with New Jersey
National Bank.

NAME OF CORPORATION OR FIRM Applied Logic Corporation		# CD C 1586	
Card #1 of 2		21 0743492	
M.T. Kobach or F. C. Oglesby		FEDERAL TAX I.D. # OR SOC. SEC. #	
Signed up to \$5000.00 - Over		☐ CORP. ☐ T.N. # SIGS. 1	
\$5000.00-2 Signatures Required		☒ CORP. ☐ T.N. # SIGS. 01	
		☐ PARTN. ☐ PARTN. # REQUIRED 2	
NEW JERSEY NATIONAL BANK	SIGNATURE E1	TITLE	
	SIGNATURE E2	TITLE	
	SIGNATURE E3	TITLE	
	ADDRESS	One Palmer Square, Princeton, N.J. 08540	
	FILED 9/25/72	Auto on File	
BUSINESS	TELEPHONE		
4 5/8% 30 das.	day	02	\$100,000.00
Due 10/25/72	OPENED BY	BRANCH	DATE OPENED

NAME OF CORPORATION OR FIRM Applied Logic Corporation		# CD No. C 1586	
Card #1 of 2		21 0743492	
M.T. Kobach or F. C. Oglesby		FEDERAL TAX I.D. # OR SOC. SEC. #	
Signed up to \$5000.00 - Over		☐ CORP. ☐ T.N. # SIGS. 1	
\$5000.00-2 Signatures Required		☒ CORP. ☐ T.N. # SIGS. 01	
		☐ PARTN. ☐ PARTN. # REQUIRED 2	
NEW JERSEY NATIONAL BANK	SIGNATURE E1	TITLE	
	SIGNATURE E2	TITLE	
	SIGNATURE E3	TITLE	
	ADDRESS	One Palmer Square, Princeton, N.J. 08540	
	FILED 9/25/72	Auto on File	
BUSINESS	TELEPHONE		
4 5/8% 30 das.	day	02	\$100,000.00
Due 10/25/72	OPENED BY	BRANCH	DATE OPENED

It is agreed by the signer(s) that:

Items received for deposit or collection are deposited on the following terms and conditions. This bank acts only as depository collecting agent and assumes no responsibility beyond its receipt of the same. All items are credited subject to final payment and no receipt of proceeds of final payment in cash or solvent credit by the bank or its own agent. This bank may forward items to correspondent and shall not be liable for default or negligence of correspondent unless with due care and for losses or amounts, and such correspondence shall not be liable except for its own negligence. Items and their proceeds may be loaned by any Federal Reserve bank in accordance with applicable Federal Reserve rules, and by this bank or any correspondent, in accordance with any common bank usage, with any parties or procedure that a Federal Reserve bank may use or permit another bank to use, or with any other lawful means. This bank may charge back, at any time prior to midnight on its business day next following the day of receipt, any item drawn on this bank which is maintained to be drawn against insufficient funds or otherwise not good or payable. This bank may charge back at any time after payment any check it received for deposit. All items received after this bank's regular business hours shall be deemed received the next business day.

I, _____, the Secretary of

do hereby certify:

That the persons whose names appear upon the reverse side hereof are officers of _____ and that each of said officers has been duly elected or appointed to the office set opposite his name, has duly qualified therefor, and now lawfully holds such office;

That the signatures of such officers are their genuine signatures, with which I am familiar.

IN WITNESS WHEREOF, I have hereunto affixed my hand on this

day of _____, 19____

Secretary.

PLAINTIFF'S EXHIBIT NO. 6 IN EVIDENCE

Minutes of Board of Directors meeting of
ALC held on August 29, 1976.

REGULAR MEETING OF THE BOARD OF DIRECTORS
OF
APPLIED LOGIC CORPORATION

A regular meeting of the Board of Directors of Applied Logic Corporation was held on August 29, 1972, at 9:30 A.M. at 900 State Road, Princeton, New Jersey, pursuant to written notice.

Present were Messrs. Mobach, Bodman, Lang, Lynch, Smalheiser and Dr. Zachary. Dr. Oglesby and Mr. Heher were present at the request of the Board, the latter acting as Secretary of the meeting. Mr. Beckwith was abroad on a business trip and unable to attend.

The Chairman called the meeting to order, whereupon, on motion of Dr. Bodman, seconded by Mr. Lang, the minutes of the meeting of June 27, 1972 (there was no July meeting) were unanimously approved as submitted, subject only to deletion in Paragraph 3, Page 1, of the words, "...due to absence of a quorum on the regularly scheduled meeting date...".

Mr. Mobach asked Dr. Oglesby to give the Financial Reports, referring to the "Consolidated Balance Sheet, July 31, 1972" distributed with the Notice of this meeting (also that for June 30, 1972); the \$54,000 in subscription receivables has been received, and the proceeds of the sale of the MA10 applied to discharge a portion of the \$100,000 guaranteed

bank loan. \$200,000 in current assets are now in Certificates of Deposit. On the liability side, it was noted that Mr. Richard M. Colgate was giving serious consideration to conversion of his \$100,000 principal amount of the remaining \$125,000 subordinated convertible notes issued pursuant to the September 2, 1970, Financing Agreement.

Dr. Oglesby next referred to the "Summary of Receipts and Disbursements - July 31, 1972" (also for June 30, 1972), commenting on trends in the various items reported. Mr. Lang inquired about high equipment charges, which Dr. Oglesby explained to be the result of delayed, cumulative billing practices by suppliers. Dr. Oglesby also reported that the audit expense reflects the efforts to discharge all unpaid 1971 bills by fiscal year-end to bring the Arthur Andersen & Co. account current before this year's audit.

Mr. Lang inquired on the status of Mr. Pagano's long-lines telephone cost study. Dr. Oglesby replied that significant progress had been made, with average monthly charges dropping from a level of \$38,000 per month early this year to approximately \$34,000. Long distance lines are continuously being monitored for possible redistribution of lines in the network.

Dr. Zachary inquired about fluctuations in trade receivables. Dr. Oglesby reported this was a normal pattern resulting from Federal Government disbursement practices by the various agencies.

Dr. Oglesby next referred to a new schedule distributed to the Board for the first time with the Notice of this meeting entitled, "Payment Schedule per Recapitalization Agreement (September 15, 1971)", explaining the various items reported in terms of applicable requirements of the Agreement. This report will be sent monthly to the parties mentioned in Category I of the Agreement. After discussion, it was agreed, (Mr. Mobach dissenting) that interest on invested cash from the sale of equity (Certificate of Deposit, etc.) should be reported as operating income. Mr. Mobach agreed to reflect this interpretation of the Recapitalization Agreement in future reports. After further discussion, it was unanimously agreed that repayment of notes receivable from employees (present and former), for the purchase of equity, should not be included as operating income, although payments in settlement of overdue receivables and payables should be included to determine the operating cash flow. The Board authorized payment of creditors directly instead of through a special account to expedite the receipts by individual parties.

At Mr. Lynch's request, Dr. Oglesby agreed to present a report on the status of such overdue notes receivable at the next meeting of the Board.

The cost of the fiscal 1972 audit has been resolved at \$14,000 with Arthur Andersen and Company, a significant

reduction from previous years, as the result of improved in-house procedures and controls which will simplify the auditor's work. The pre-audit was completed successfully in July, and the final audit will consume about two weeks commencing October 30, 1972.

Dr. Oglesby reported on the State of New Jersey's Sales and Use Tax Claims, pointing out that considerable progress had been made with the reaudit of the Sales Tax Claim with the possibility now of a sharp reduction in the final claim. The reaudit for the Use Tax Claim is expected to be done toward the end of September.

Mr. Mobach then gave the President's Report referring, together with Mr. Heher, to the status of all pending litigation. Disposition of the IMC Claim (in excess of \$50,000) for \$1,000 by Award of the American Arbitration Association's Panel (as well as payment of \$91.03 remaining in expenses) was reported in detail. Authority for a cash payment not exceeding \$20,000 or issuance of common stock not exceeding 15,000 shares and 3,000 warrants, with preference for settlement entirely in cash, was unanimously granted management for settlement of the Scantlin Electronics Inc. claims on motion of Mr. Lynch, seconded by Dr. Bodman. Mr. Mobach stated he would also shortly begin attempts to settle the Badger Metal claim.

Mr. Mobach next reported on recent dealings with Mr. Titsch of First National City Bank, who indicated that he was

recommending that Applied Logic's Corporation's loan be hereafter administered on a normal basis rather than as delinquent. Mr. Mobach stated that Mr. Titsch's ill-advised and erroneous comments about the financial condition of this corporation may have resulted in loss of additional time-sharing business from First National City Bank and others.

Mr. Mobach next gave the "Marketing Report" - June/July 1972". Mr. Lang inquired about plans for additional marketing efforts directed toward commercial accounts. Mr. Mobach reported on favorable negotiations with INA and Bethlehem Steel, but stated short term emphasis would be on concluding several major government contracts.

Mr. Mobach distributed the preliminary Financial Plan for FY1973. The Company expects to reach a revenue level of \$3.7 million, or an increase of 32% over the \$2.8 million revenue level expected for FY1972. Considering payments of an estimated \$267,000 during FY1973 to the parties to the Recapitalization Agreement of September 15, 1971, this would result in a net operating profit of approximately \$200,000 for the Company or approximately \$0.10 per share.

After discussion, it was unanimously agreed that the next meeting would be held on Tuesday, October 10, 1972, and that all future meetings thereafter would be held at 10:00 A.M. rather than at 9:30.

Dr. Bodman had to leave the meeting at this time to make a connection at Philadelphia International Airport.

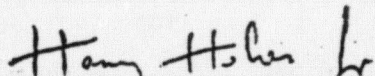
Manpower requirements for FY1973 were discussed, indicating an increase from about 75 to 85, reflecting increased sales and marketing capability as well as filling necessary technical and administrative vacancies.

Dr. Zachary urged that greater strength be added to the commercial marketing effort. General discussion ensued on various approaches to increase commercial revenue, including possible sale of dedicated systems.

Mr. Mobach reported that the IBM 2780's had been delivered, and were being installed in Washington this week.

• There being no further business, it was, on motion of Dr. Zachary, seconded by Mr. Lynch, unanimously adjourned at 12:25 P.M.

Respectfully submitted,


Harry Heher, Jr., Secretary

PLAINTIFF'S EXHIBIT NO. 7 IN EVIDENCE

Assignment of Savings Account to New
Jersey National Bank by ALC dated
November 1, 1974.

ASSIGNMENT OF SAVINGS ACCOUNT

To: NEW JERSEY NATIONAL BANK
1 WEST STATE STREET
TRENTON, NEW JERSEY

FOR VALUE RECEIVED, I/We hereby sell, assign, transfer and set over unto NEW JERSEY NATIONAL BANK, ^{Certificate of Deposit}
its successors and assigns, my/our savings account No. 240390 in the NEW JERSEY NATIONAL BANK and any
moneys now or hereafter on deposit therein to the extent thereof as security for loan of
--Sixty Thousand and 00/100----- Dollars (\$ 60,000.00----).

This assignment shall be a continuing one and shall be effective for any renewals or substitutions of the above loan until same is entirely paid; and shall also operate as security for payment of any other debts or liabilities either directly or indirectly of the undersigned to NEW JERSEY NATIONAL BANK now in existence or hereafter contracted.

NEW JERSEY NATIONAL BANK is hereby authorized to charge against the above savings account, any note or notes representing unpaid balance of above loans at maturity, thereafter or otherwise, and any other debts or liabilities either directly or indirectly of the undersigned, with interest and costs, if not otherwise paid and I/We hereby make, constitute and appoint NEW JERSEY NATIONAL BANK my/our true and lawful attorney for so doing.

~~Witness~~ Seal

Attested by: [Signature]

Applied Logic Corporation

By: [Signature] (Seal)

By: [Signature] (Seal)

Amount 1974
Amount of Certificate of Deposit

The Signature(s) as shown above compare correctly with our files. Present Balance is \$ 100,000.
Above assignment has been properly recorded on ledger and signature cards.

Savings Teller

DEFENDANT'S EXHIBIT A IN EVIDENCE

Three commercial loan department payments, dated 12/9/74, 12/3/74 and 12/31 from New Jersey National Bank to ALC.



NEW JERSEY NATIONAL BANK
COMMERCIAL LOAN DEPARTMENT - PAYMENTS

LOAN ACCT. NO.	NOTE NO.	RATE	DUE DATE	DATE OF TRANS.	DAY OF YEAR	B S.C.	PRINCIPAL	INTEREST ☐ NEW ☐ PAST DUE
		5.0	demand	12-9-74	343	01	101,551.11	

Redemption of C.D. #4462 \$100,791.67
+ interest of \$759.44

Applied Logic Corp.

OFFICER	BRANCH
ML	02

☐ FULL
☐ PARTIAL

PAYMENT
☐ DUE TODAY
☐ PREPAID
☐ PAST DUE PAID
☐ PAST DUE RENEWED

CKG. ACCT. NO.

BALANCE OWING
122,709.31

PREPARED BY 12-9-74 DATE

CUSTOMER RECORD—Please Retain for Income Tax Purposes

Beatrice R. Gottlieb



NEW JERSEY NATIONAL BANK
COMMERCIAL LOAN DEPARTMENT - PAYMENTS

LOAN ACCT. NO.	NOTE NO.	RATE	DUE DATE	DATE OF TRANS.	DAY OF YEAR	B S.C.	PRINCIPAL	INTEREST ☐ NEW ☐ PAST DUE
		5.0%	demand	12-3-74	343	01	100,739.58	

Redemption of C D #4446 \$100M + interest
\$739.58 ✓

Applied Logic Corp.
Attn: Rich Rodefield
900 State St. Rd.
Princeton, N.J.

OFFICER	BRANCH
ML	02

☐ FULL
☐ PARTIAL

PAYMENT
☐ DUE TODAY
☐ PREPAID
☐ PAST DUE PAID
☐ PAST DUE RENEWED

CKG. ACCT. NO.

BALANCE OWING
224,260.42

PREPARED BY 12-9-74 DATE

CUSTOMER RECORD—Please Retain for Income Tax Purposes


NEW JERSEY NATIONAL BANK
COMMERCIAL LOAN DEPARTMENT - PAYMENTS

NO 179 8/76

LOAN ACCT. NO.	NOTE NO.	RATE	DUE DATE	DATE OF TRANS	DAY OF YEAR	B S C	PRINCIPAL	INTEREST ☐ NEW ☐ PAST DUE
		5.0	demand	12-31 12-31-75	7	01	41,485.42	

Applied Logic Corp.
One Palmer Square
Princeton, N.J.

OFFICER	BRANCH
GI	

PAYMENT

- ☐ DUE TODAY
☐ FULL
☐ PREPAID
☐ PARTIAL
☐ PAST DUE PAID
☐ PAST DUE RENEWED

TRANS CODE

28

CNG ACCT NO
check

TOTAL CHARGE
41,485.42

BALANCE OWING
81,223.89

 PREPARED BY JH 1-7-75 DATE _____

CUSTOMER RECORD—Please Retain for Income Tax Purposes

A-402

NEW JERSEY NATIONAL BANK

4-1-75

For: to close the account. Account is bankrupt.

320-358-9

ACCOUNT NUMBER

TRAN
COO

28

Cashier's Check made payable to
NEW JERSEY NATIONAL BANK
NOTE DEPARTMENT

Cust. Asct.
SR. OR DEPT

L. Heinemann

SIGNATURE

SIGNATURE
L. Luximon

03203589

28.0000 168 298

PLEASE NOTIFY BANE
PROMPTLY OF ANY
CHANGE OF ADDRESS

320-358-9

ACCOUNT NUMBER

APPLIED LOGIC CORPORATION
ONE PALMER SQUARE
PRINCETON N J 08540

TOTAL DEBITS INCLUDES ALL CHECKS AND ALL OTHER CHARGES. TOTAL CREDITS INCLUDES ALL DEPOSITS AND ALL OTHER CREDITS. ALL POSTINGS ARE ITEMIZED BELOW.

BALANCE ON
03/31/75 : 1,682.98

TOTAL DENTS = 1,682.98

TOTAL CREDITS + .00

BALANCE ON

08540 04/03/75 : .00

**NEW
JERSEY
NATIONAL
BANK**

24 MA

[illegible]

DEFENDANT'S EXHIBIT C IN EVIDENCE

Receipt dated 4/4/75, by New Jersey National Bank acknowledging receipt of cashiers check in amount of \$830.67 from ALC.

Reference _____

TRENTON, N. J., April 4, 19 75

Received from APPLIED LOGIC CORPORATION, Cashiers Check #302028 datedMarch 30, 1975 in the amount of \$830.62 , interest from Certificate ofDeposit #240390. Check was applied against loan in the name of APPLIEDLOGIC CORPORATION.

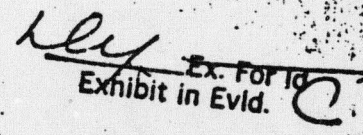
ADMINISTRATION

APR 16 1975

UN106-9/70

NEW JERSEY NATIONAL BANK

By


Michael S. Lynch
Executive Vice President
Ex. For Id
Exhibit in Evid.

JUN 16 1975

Beatrice R. Gottlieb

RECEIPT

DEFENDANT'S EXHIBIT D IN EVIDENCE

1970 and 1971 Agreements between ALC and other parties including New Jersey National Bank re-capitalizing ALC debt, dated 9/2/70 and 9/15/71, respectively.

AGREEMENT

THIS AGREEMENT made this 2nd day of September, 1970 by and between APPLIED LOGIC CORPORATION, a New Jersey corporation having its principal offices at One Palmer Square, Princeton, New Jersey 08540 (hereafter "ALC"); the following banking institutions (hereafter sometimes collectively referred to as the "Banks"):

Chase Manhattan Bank, One Chase Manhattan Plaza,
 NYC 10005
 First National City Bank, 399 Park Avenue, NYC 10017
 First National Bank of Princeton, 90 Nassau St.,
 Princeton, N. J. 08540
 New Jersey National Bank, One West State Street,
 Trenton, New Jersey 08608;

the following leasing companies (hereafter sometimes collectively referred to as the "Lessors"):

A/L Lessors, One Elizabethtown Plaza, Elizabeth,
 New Jersey
 Boston Leasing Corporation, 35 Congress St., Boston,
 Mass. 02109
 CIC Leasing Corp. and/or Coburn Leasing Company, Inc.,
 Statler Hilton Bldg., Suite 1620, 107 Delaware Avenue,
 Buffalo, New York 14202 (hereinafter "CIC Leasing Corp.")
 CIT Leasing Corp., 650 Madison Avenue NYC 10022
 Colgate Research & Development Co., One Palmer Square,
 Princeton, New Jersey 08540; and

DIGITAL EQUIPMENT CORP., 146 Main Street, Maynard, Massachusetts 01754 (hereafter "DEC").

W I T N E S S E T H:

WHEREAS ALC is indebted to the Banks, the Lessors, and to

DEC in varying and substantial amounts, and the parties hereto desire to reschedule the terms of payment of such sums in a manner mutually agreed upon to be in the best interests of all parties concerned,

NOW, THEREFORE, in consideration of the payments and forbearances as well as those various other mutual covenants, terms, and conditions herein set forth, the parties hereto do agree as follows:

1. The Lessors hereby grant a moratorium until August 1, 1971 or until the termination of this Agreement, whichever first occurs, on all rental payments due or to become due from ALC to them prior to August 1, 1971 pursuant to the several respective leasing agreements now in force between ALC and the Lessors. Such rental payments (not in excess of thirteen such monthly payments) which are not paid by ALC to the Lessors are hereinafter called the "Deferred Payments." All rental payments due or to become due from ALC to the Lessors on or prior to August 1, 1971, other than the Deferred Payments, shall be due on August 1, 1971. The Deferred Payments shall be deemed several loans from the respective Lessors to ALC commencing on the dates on which such Deferred Payments would have been due but for the provisions of this Agreement. The principal amounts of the Deferred Payments shall be due in twenty-six equal monthly installments beginning on the first day of August, 1971 and on the first day of each month thereafter but only if and to the extent that the cash flow of ALC (taking into account ALC's obligations to pay other indebtedness, including indebtedness to the Banks and DEC pursuant

to this Agreement) reasonably permits such payments at such times; otherwise, the principal amounts of the Deferred Payments shall be due in twenty-six equal monthly installments beginning not later than on the first day of August, 1972 and on the first day of each month thereafter. In any event, all unpaid principal amounts of the Deferred Payments shall be due forthwith if this Agreement is terminated pursuant to any provision hereof. Subject to the provisions of section 8 hereof, ALC may, at its option, prepay all or any portion of the principal amounts of the Deferred Payments without penalty. Interest on the principal amounts of the Deferred Payments shall accrue at the rate of 14% per annum from the dates on which the Deferred Payments would have been due but for the provisions of this Agreement. Interest accrued on the principal amounts of the Deferred Payments to August 1, 1971 shall be due on January 31, 1972. Interest accrued on the principal amounts of the Deferred Payments from August 1, 1971 to the dates such principal amounts are paid shall be paid on such principal payment dates. If and to the extent that the principal amounts of the Deferred Payments are paid on the first day of August, 1971 and on the first day of each month thereafter, interest on such amounts shall be computed at a rate of simple interest of 14% per annum; otherwise, interest on the principal amounts of the Deferred Payments shall be computed at a rate of 14% per annum compounded on August 1, 1972 and on the first day of August of each year thereafter.

Nothing contained in this section 1 shall be deemed to

affect any other obligations of ALC to the Lessors pursuant to the several respective leasing agreements now in force between ALC and the Lessors, including, without limitation, ALC's obligations under the said agreements to maintain insurance and to pay various taxes and other fees as set forth therein.

The total amounts of rental payments due or to become due from ALC to each of the Lessors pursuant to the several respective leasing agreements now in force between ALC and the Lessors, and the respective dates to which ALC has made monthly rental payments to each of the Lessors pursuant to such agreements, are set forth in Schedule AA hereto. Each of the Lessors represents that it has not accelerated payment under any of the respective leasing agreements now in force between ALC and such Lessor and that it has not exercised any of the rights to which it is entitled thereunder upon the happening of any one or more events of default by ALC. Each of the parties hereto agrees that the right, title, and interest of each of the Lessors to the equipment which is leased to ALC under the several respective leasing agreements now in force between ALC and the Lessors shall not be contested whether or not this Agreement is terminated and remains in full force and effect.

In the case of CIC Leasing Corp., the provisions of this section 1 shall be applicable mutatis mutandis to the several respective leasing agreements now in force between the ALC Facilities Managers and CIC Leasing Corp. and to the rental payments due or to

become due from ALC through its Facilities Managers to CIC Leasing Corp. pursuant to such leasing agreements.

2. The Banks hold an aggregate of demand notes of ALC in the sum of One million three hundred thousand dollars (\$1,300,000). The Banks agree to forbear demand of payment of principal and interest (except as hereinafter provided) until August 1, 1971, or the termination of this Agreement, whichever first occurs. Upon request of New Jersey National Bank the Banks and ALC agree to convert said notes into two notes payable at the New Jersey National Bank, one note in the amount of \$300,000, which shall be held by New Jersey National Bank on behalf of First National Bank of Princeton (the "\$300,000 note"), and the other note in the sum of \$1,000,000, which shall be held by New Jersey National Bank on behalf of the other Banks (the "\$1,000,000 note"). Interest on the \$300,000 note shall accrue at the rate of 8.75 % per annum but shall not be paid by ALC until August 1, 1971, or until the termination of this Agreement, whichever first occurs. Interest payments on the \$1,000,000 note shall be due from ALC monthly, commencing with the month of August, 1970, with payment to be made not later than the tenth day of the next succeeding month and each month thereafter until payment of principal and interest is made in full. The \$1,000,000 note shall bear interest at the rate of 8.2375%, which rate of interest is a combination of the respective rates now in force for the respective demand notes of Chase Manhattan Bank, First

National City Bank, and New Jersey National Bank. Within ten days after the date of this Agreement, ALC shall pay interest due Chase Manhattan Bank, First National City Bank, and New Jersey National Bank through July 31, 1970. ALC shall conduct all banking of its funds at and through New Jersey National Bank until both notes are paid. Except for the above forbearance, all other terms and conditions of said notes shall remain in force without alteration.

3. DEC shall defer until August 1, 1971, or the termination of this Agreement, whichever first occurs, all payments due from ALC to DEC on all current accounts receivable held by DEC

(excepting any and all field service charges either under a service contract or otherwise) as of the close of business on July 17, 1970 in the amount of \$1,011,768.86 ("principal sum") for a period of thirteen (13) months commencing July 1, 1970. The principal sum shall be due and payable on August 1, 1971, ALC reserving the right to prepay all or any portion of said principal sum, subject to the provisions of paragraph 8 herein. Interest on the unpaid balance of the principal sum shall be due and payable by ALC at the annual rate of $9\frac{1}{2}\%$. Interest shall begin to accrue on August 1, 1970 and shall be payable monthly commencing August 1, 1970, but payment of such interest shall be deferred and accrued, payment to be made on August 1, 1971, together with the payment of the principal sum. Such deferred payment of the principal sum and interest in accordance with the foregoing shall, at DEC's option, be evidenced by a promissory note. Said obligation to the extent it may not now be secured by a security interest shall be secured by a security interest in favor of DEC, except as modified by the provisions of paragraph 4 of this Agreement.

In consideration of said deferment ALC agrees that it shall not make any use whatsoever of the equipment previously sold to ALC by DEC described on the schedule marked "Schedule A" attached hereto and made a part hereof ("equipment") so long as the principal sum or any part thereof and applicable interest payments remain unpaid. ALC agrees to allow DEC to enter upon ALC's premises at such times as DEC shall reasonably request in order to take such steps as DEC shall deem necessary to render the equipment incapable of use. ALC shall assist DEC in this

regard if such assistance is, under the particular circumstances, necessary or desirable to accomplish the stated purpose. Title to and all incidents of ownership in and to the equipment, including without limiting the generality thereof, risk of loss, shall remain in ALC. DEC shall have the right at any time after December 31, 1970 to take possession of and title to any or all of such equipment and return such equipment to DEC's factory and/or make any other disposition or use of such equipment, providing it shall give no less than 30 days prior written notice, and subject to prior approval of substitute collateral by the New Jersey National Bank as provided herein. Upon the taking of possession and title to such equipment and providing it is then in good working condition, DEC shall credit ALC with the original invoiced price of such equipment.

ALC also agrees to pay all field service charges as and when due commencing as of July 25, 1970. Payments of all outstanding field service charges due and owing as of July 24, 1970 in the amount of \$16,512.99 shall be paid on or before August 1, 1971, in installments to be agreed upon by DEC and ALC, but in no event shall such installments be any less favorable to DEC than equal monthly installments.

Nothing herein contained shall be construed to alter the existing rights, obligations or remedies of ALC or DEC, one to the other, as recited in purchase orders, change orders, contracts, etc., as amended, heretofore executed by and between ALC and DEC, except as specifically and expressly stated herein. Without limiting the generality of the foregoing, the delivery, installation and acceptance dates applicable to the equipment

shall remain as specified in the relevant purchase orders, change orders, contracts, etc., dated prior hereto.

4. The New Jersey National Bank shall extend to ALC an irrevocable line of credit forthwith until August 1, 1971, or until termination of this Agreement, whichever first occurs, in the amount of Seven hundred fifty thousand dollars (\$750,000), with interest on loans taken by ALC against said line of credit to be computed at 10% per annum on the unpaid principal commencing with the respective dates of such loans and payable monthly not later than the tenth day of the next succeeding month and each month thereafter until payment of the loans is made in full. No portion of said irrevocable line of credit shall be drawn down unless ALC raises at least \$300,000 through the sale of the convertible notes described in section 5 hereof on or before September 14, 1970, and such \$300,000 is used by ALC in the ordinary course of business and in payment of \$100,000 loaned to ALC by New Jersey National Bank on August 28, 1970.

It is understood that the other Banks which are party to this Agreement (other than First National Bank of Princeton) shall participate in said line of credit with New Jersey National Bank in a proportion equal to each Bank's relative share of the \$1,000,000 note hereinbefore mentioned. The Banks shall not be obligated to honor the line of credit herein described upon the commencement of any proceeding in bankruptcy, reorganization, receivership, or insolvency by or against ALC or ALC's property

or assets, or if ALC makes a general assignment for the benefit of ALC's creditors, or if ALC seeks relief under any other law providing for the relief of debtors.

(a) Payment of all loans taken by ALC against said line of credit shall be secured as follows:

(1) \$350,000 in the form of a security interest giving a first lien recordable and otherwise conforming to the requirements of the Uniform Commercial Code as enacted by the State of New Jersey to be executed by ALC in favor of the New Jersey National Bank secured by the equipment, set forth in Schedule A, previously sold in the normal course of business by DEC to ALC.

In the event New Jersey National Bank shall take action whereby it exercises its rights against said equipment in order to effect payment of the indebtedness due under the terms of paragraph 4(a)(1) of this Agreement, DEC agrees to refurbish and remarket for and on behalf of New Jersey National Bank in accordance with DEC's normal business practices, such refurbishing and remarketing to be under DEC's sole control, all of the equipment covered by said security interest to the extent of the amount of such loans then secured by said security interest that New Jersey National Bank can then legally deliver to DEC under the applicable provisions of the Uniform Commercial Code as enacted by the State of New Jersey. New Jersey National Bank agrees to deliver to DEC said equipment at a point to be designated by New Jersey National Bank. If the de-

livery point is other than DEC's factory, DEC shall make arrangements for the shipment of the equipment to DEC's factory for refurbishing. DEC shall be under no obligation to refurbish said equipment unless or until said equipment has been resold. It is understood and agreed that the costs of the shipment including insurance of same of said equipment to DEC's factory and the refurbishing of said equipment shall be reimbursed to DEC, or to the New Jersey National Bank if the cost of shipment including insurance of same was paid by New Jersey National Bank, before any monies are applied to the then outstanding indebtedness of ALC secured by said security interest. The cost of such refurbishing shall be at the standard charges then prevailing, but in no event more than 5% of the original selling price of the equipment. Notwithstanding the foregoing, in the event of accident, neglect, misuse, failure of electrical power, air conditioning, humidity control, unusual physical or electrical stress, fire, flood, riot, or other calamity or act of God, or causes other than ordinary use, DEC shall be reimbursed for all costs of refurbishing at the standard charges then prevailing without regard to the 5% limitation. Neither title to nor any incidents of ownership in and to said equipment shall vest in DEC at any time, including without limiting thereby, risk of loss. If the proceeds of the sale of all the equipment, after deducting

all costs as specified hereinabove, are less than \$350,000, DEC shall pay to New Jersey National Bank the difference between the amount realized on the sale of all the equipment and \$350,000 within ten days after the sale and delivery by New Jersey National Bank of the last piece of equipment included in Schedule A, or the receipt by DEC of written notice to that effect, whichever last occurs, provided that DEC shall have the sole control over and discretion in the remarketing and sale of such equipment, such remarketing and sale to be for and on behalf of New Jersey National Bank; and in such event DEC shall be subrogated to the rights of New Jersey National Bank with respect to any amount paid by DEC to New Jersey National Bank pursuant to the provisions of this paragraph (a)(1). In the event DEC takes possession of and title to any or all of such equipment during such time as any portion of the loans secured by such equipment are outstanding, DEC shall have substituted other collateral for such equipment, such other collateral to be approved by New Jersey National Bank (which approval shall not unreasonably be withheld), so that the total collateral so substituted shall be equal to \$350,000 or the portion of said \$350,000 not then repaid by ALC; and upon such substitution New Jersey National Bank shall release its security interest in such equipment.

(2) \$225,000 by at least \$300,000 in hypothecated marketable securities, said securities to be satisfactory to the Banks. In the event the market value of said securities becomes \$275,000, or less (on the various exchanges where they are traded) New Jersey National Bank shall have the right to sell all or part of said collateral and hold the proceeds in cash.

(3) An aggregate of \$75,000 in the form of several personal guarantees to be executed by several officers, directors and/or key employees of ALC in favor of New Jersey National Bank and secured by collateral pledged with said Bank having a market value on the date of this Agreement of at least \$75,000 (other than the securities referred to in paragraph (2) above). Each guarantee of the aggregate personal guarantees shall be secured with satisfactory collateral equal to the principal amount of said guarantee. In the event the market value of said securities securing any guarantee becomes less than the total sum due on said guarantee, the New Jersey National Bank shall have the right to sell said securities securing such a guarantee and hold the proceeds in cash provided New Jersey National Bank gives to the maker of such a guarantee notice by telegram delivered at an address as set forth in the guarantee

of its intention to sell said securities. Upon delivery of said notice in accordance with prevailing delivery standards of Western Union Company, maker shall have the right to deliver before the beginning of the business day following the delivery of said notice securities satisfactory to the New Jersey National Bank or cash in the amount sufficient to restore said collateral to the amount of said guarantee including interest due. "Business day" shall be defined as beginning at 10:00 o'clock A.M., prevailing time. "Business day" shall not be a Saturday, Sunday, or legal bank holiday.

(4) \$100,000 in the form of a security interest giving a first lien executed by AIC in favor of New Jersey National Bank pledging all unencumbered assets except for that equipment described in Schedule A.

(5) Such other additional collateral as may be necessary to pay interest due herein.

(b) In the event the Bank shall take action whereby it exercises its rights against the collateral in section 4(a)(1)(2)(3) or (4), then in that event, the collateral shall be affected in the following order:

(1) 350/650 of the outstanding loan at the time of exercise up to \$650,000 shall be realized from the collateral set forth in paragraph 4(a)(1).

(2) 225/650 of the outstanding loan at the time of exercise up to \$650,000 shall be realized from the collateral set forth in paragraph 4(a)(2).

(3) 75/650 of the outstanding loan at the time of exercise up to \$650,000 shall be realized from the collateral set forth in paragraph 4(a)(3).

(4) All of the loan in excess of \$650,000 together with interest shall be realized from the collateral set forth in paragraph 4(a)(4) and 4(a)(5).

(c) ALC shall not repay any portion of the principal advanced under the \$750,000 line of credit on or before August 1, 1971 or upon termination of this Agreement, whichever first occurs, and until ALC makes arrangements satisfactory to the New Jersey National Bank to pay the indebtedness of \$1,300,000. Said \$1,300,000 shall be due at New Jersey National Bank on demand on August 1, 1971 or upon termination of this Agreement, whichever first occurs.

(d) Notwithstanding any other provision of this section 4, ALC may at its option at any time repay \$100,000 of the loan taken against said line of credit; and, in such event, at ALC's request said line of credit shall be reduced to \$650,000, and all the collateral referred to in paragraph 4(a)(4) shall be released except as is necessary to insure payment of interest as set forth in paragraph 4(a)(5).

(e) Upon repayment of principal other than by liquidation of the collateral advanced under the \$750,000 line of credit, collateral under paragraph 4(a)(2) and 4(a)(3) shall be returned in accordance with the following schedule:

(1) When loan is reduced to \$430,000, one third of collateral under paragraph 4(a)(2) and one third of collateral under paragraph 4(a)(3) shall be released.

(2) When loan is reduced to \$210,000, an additional one third of collateral under paragraph 4(a)(2) and one third of collateral under paragraph 4(a)(3) shall be released.

(3) When loan is completely paid, as to principal and interest, all remaining collateral shall be released.

5. It is understood that ALC is in process of raising approximately \$500,000 through the sale of its convertible notes. Such notes shall be due five years after the date of their issue, shall not bear interest, shall be subordinated in right of payment to all indebtedness of ALC whether now existing or hereafter arising (including all amounts due or to become due to the Lessors, the Banks, and DEC), and shall be convertible into common stock of ALC at a conversion price of \$.50 principal amount of notes per share of common stock. This Agreement shall terminate and be of no further force and effect if ALC does not raise at least \$300,000 through the sale of such notes on or before September 14, 1970.

6. ALC shall forthwith issue warrants for the purchase of an aggregate of 400,000 shares of its common stock as follows:

(i) ALC shall issue warrants for the purchase of 350,000 shares of its common stock to the Lessors in proportion to their respective interests in the Deferred Payments (as defined in section 1 hereof); and

(ii) ALC shall issue warrants for the purchase of 50,000 shares of its common stock to the Banks in proportion to their respective interests in the \$750,000 line of credit referred to in paragraph (4) hereof.

provided, however, that in the event that ALC shall resume making rental payments in full to the Lessors pursuant to the several respective leasing agreements now in force between ALC and the Lessors on the dates on which such rental payments would have been due but for the provisions of this Agreement, then the number of warrants (or shares issued upon the exercise thereof) issued to the Lessors shall be reduced by an amount equal to 350,000 multiplied by a fraction of which the numerator shall be the number of full months prior to August, 1971 for which such rental payments are made and the denominator shall be thirteen; and provided further that if ALC shall make payment of any portion of the \$1,300,000 aggregate principal amount of promissory notes to the Banks prior to August 1, 1971, then the number of warrants (or shares issued upon the exercise thereof)

issued to the Banks shall be reduced to an amount equal to 50,000 multiplied by a fraction of which the numerator shall be the average unrepaid principal amount of such notes during the twelve-month period ending July 31, 1971 and the denominator shall be \$1,300,000. The issuance of the warrants in accordance with this section 6 shall be without prejudice to the rights of the holders of any outstanding warrants heretofore issued by ALC.

Each warrant shall evidence the right of the holder thereof to purchase one share of common stock of ALC at any time on or before July 31, 1975 at a purchase price of \$.50 per share. ALC agrees that if at any time prior to July 31, 1977 it shall file a registration statement under the Securities Act of 1933 (the "Securities Act"), it shall, at the request of the holders of the warrants and/or shares of common stock issued upon the exercise thereof, include such warrants and/or shares in such registration statement in order to permit the distribution of such warrants and/or shares to the public. ALC further agrees that, at the request of any holder or holders of the warrants and/or shares prior to July 31, 1977, ALC will, at the expense of such holder or holders, register such warrants and/or shares under the Securities Act in order to permit the distribution of such warrants and/or shares to the public. In the event that any warrants and/or shares

are registered under the Securities Act, AIC and the holders of such warrants and/or shares will enter into indemnity agreements in the usual and customary form with respect to liabilities under the Securities Act or otherwise. The provisions of this section 6 with respect to the registration under the Securities Act of the warrants and the shares of common stock issued upon the exercise thereof shall be applicable mutatis mutandis to the convertible notes referred to in section 4 hereof and the shares of common stock issued upon the conversion thereof.

7. There shall forthwith be established a committee (the "Committee") of five members consisting of one representative

of each of the following parties to this Agreement:

- (1) A/L Lessors;
- (ii) Boston Leasing Corporation;
- (iii) CIC Leasing Corp.;
- (iv) CIT Leasing Corp.; and
- (v) New Jersey National Bank.

The Committee through its duly authorized representatives shall be given access to all the books and records of ALC and all business, financial, and corporate matters concerning ALC, including the proceedings of its stockholders, its Board of Directors, and all committees thereof. ALC shall render to the Committee such reports with respect to the business and operations of ALC, including projections of future operations, as the Committee or any member thereof shall reasonably request, and the chief executive officer or officers of ALC and its chief financial officer or officers shall make themselves available to the Committee and to each member thereof to discuss any aspect of the business and operations of ALC at all reasonable times. ALC shall submit to each member of the Committee as soon as practicable, but in any event within five business days after the end of each month, a report setting forth for such month and cumulatively from August 1, 1970 to the end of such month, all in such reasonable detail as the Committee or any member thereof shall request--

- (1) cash receipts;

- (ii) cash expenditures; and
- (iii) operating revenues.

DEC at its option shall have the right to receive whatever reports and other information are made available to the Committee, at the same time and to the same extent as if it were a member of the Committee, and to be in attendance as an observer at all meetings of the Committee.

(a) In any of the following circumstances, any member of the Committee shall have the right at any time, by written notice to the other parties to this Agreement, to terminate this Agreement, in which event this Agreement shall terminate and be of no further force or effect.

(1) If cash expenditures exceed cash receipts for any of the periods specified below by an amount which is greater than the amount shown opposite such period below:

<u>Period</u>	<u>Amount</u>
One month ending August 31, 1970	\$287,000
Two months ending September 30, 1970	458,000
Three months ending October 31, 1970	627,000
Four months ending November 30, 1970	772,000
Five months ending December 31, 1970	792,000
Six months ending January 31, 1971	866,000
Seven months ending February 28, 1971	886,000
Eight months ending March 31, 1971	865,000
Nine months ending April 30, 1971	822,000
Ten months ending May 31, 1971	754,000
Eleven months ending June 30, 1971	651,000

If the amount realized by ALG from the sale of the convertible notes referred to in section 5 hereof exceeds \$300,000, then each amount shown in the table above shall be

increased by an amount (not in excess of \$100,000) which is equal to 50% of the amount by which the amount realized by ALC from the sale of such notes exceeds \$300,000.

(2) If operating revenues for any of the periods specified below are not at least equal to the amount shown opposite such period below:

<u>Period</u>	<u>Amount</u>
One month ending August 31, 1970	\$ 39,000
Two months ending September 30, 1970	206,000
Three months ending October 31, 1970	432,000
Four months ending November 30, 1970	686,000
Five months ending December 31, 1970	1,012,000
Six months ending January 31, 1971	1,330,000
Seven months ending February 28, 1971	1,676,000
Eight months ending March 31, 1971	2,048,000
Nine months ending April 30, 1971	2,448,000
Ten months ending May 31, 1971	2,879,000
Eleven months ending June 30, 1971	3,342,000

(3) If any person not a party to this Agreement attaches any of the assets of ALC in an amount exceeding \$10,000.

(4) If ALC makes any payment through its Facility Manager to Chandler Leasing Company pursuant to the leasing agreement now in force between ALC's Facility Manager and Chandler Leasing Company.

(b) In any of the following circumstances, any three members of the Committee shall have the right at any time, by written notice to the other parties to this Agreement, to terminate this Agreement, in which event this Agreement shall terminate and be of no further force or effect.

(1) If cash receipts did not exceed cash expenditures by more than \$150,000 per month for each of the two most recent months.

(2) If operating revenues for any of the periods specified below are not at least equal to the amount

shown opposite such period below and if cash receipts did not exceed cash expenditures by more than \$75,000 per month for each of the two most recent months.

<u>Period</u>	<u>Amount</u>
One month ending August 31, 1970	\$ 279,000
Two months ending September 30, 1970	426,000
Three months ending October 31, 1970	672,000
Four months ending November 30, 1970	926,000
Five months ending December 31, 1970	1,236,000
Six months ending January 31, 1971	1,626,000
Seven months ending February 28, 1971	2,048,000
Eight months ending March 31, 1971	2,504,000
Nine months ending April 30, 1971	2,992,000
Ten months ending May 31, 1971	3,519,000
Eleven months ending June 30, 1971	4,084,000

(3) If any person not a party to this Agreement attaches any of the assets of ALC in an amount exceeding \$5,000.

(c) For the purposes of this section 7, "cash receipts" shall mean cash receipts from the operations of ALC and shall not include the proceeds of any borrowings or of the sale of any securities of ALC or amounts realized upon the sale or other disposition of any assets of ALC; and "operating revenues" shall mean revenues derived by ALC in the ordinary course of its business, determined in conformity with generally accepted accounting principles applied on a consistent basis, and shall not include gains realized upon the sale or other disposition of any assets of ALC.

8. ALC shall not, prior to August 1, 1971 or the termination of this Agreement, whichever shall first occur, pay before it is due any obligation--

(1) to any Lessor, without the prior written consent of all other Lessors, the Banks, and DEC;

- (ii) to the Banks, without the prior written consent of the Lessors and DEC, except as set forth in paragraph 4(d); or
- (iii) to DEC, without the prior written consent of the Lessors and the Banks.

9. In the event any Lessor obtains possession of the equipment now leased to ALC under a leasing agreement now in force between ALC and such Lessor as a result of a default in rental payments under such leasing agreement (as modified by this Agreement) at any time prior to June 30, 1974 or payment in full of the Deferred Payments (as defined in section 1 hereof) to be made to such Lessor by ALC, whichever first occurs, DEC agrees to refurbish for such Lessor that portion of the DEC equipment previously sold by DEC in accordance with the standard policy for refurbishing DEC equipment now prevailing and at the standard charges then prevailing/ DEC further agrees to make available with respect to such equipment its standard field service contract then prevailing at the standard rates then prevailing. The refurbishing shall be done at DEC's factory. Such Lessor shall give DEC reasonable written notice in advance that such equipment is to be refurbished by DEC, identifying such equipment, and giving the estimated date of its arrival at DEC's factory. Such Lessor shall assume all responsibility for shipment to and from DEC's factory, title to and all incidents of

ownership in and to the equipment, including without limiting the generality thereof, risk of loss (except as the result of the negligence of DEC), to remain in such Lessor. DEC shall, at the request of any Lessor, enter into a separate agreement with such Lessor incorporating the provisions of this section 9, and such separate agreement shall remain in full force and effect notwithstanding the termination of this Agreement on account of any cause whatsoever.

10. If any proceeding in bankruptcy, reorganization, receivership, or insolvency shall be commenced by or against ALC or ALC's property or assets, or if ALC makes a general assignment for the benefit of ALC's creditors, or if ALC seeks relief under any other law providing for the relief of debtors, this Agreement shall terminate and be of no further force or effect. If ALC shall default in the making of any payment hereunder when due, or in the event of any substantial and material default, breach, or failure to perform any terms, provisions, or conditions in this Agreement or in any other

agreement between ALC and any other party hereto, any party to this Agreement shall have the right, by written notice to the other parties to this Agreement, to terminate this Agreement, in which event this Agreement shall terminate and be of no further force or effect.

11. Promptly after the execution and delivery of this Agreement ALC shall furnish each party hereto with an opinion of counsel as to the organization, existence, good standing, and corporate power of ALC, the execution, validity, and binding nature of this Agreement, and the effect of the execution and performance of this Agreement on other obligations and instruments applicable to ALC. ALC shall also furnish each party to this Agreement with a certified copy of the resolutions of its Board of Directors authorizing the execution and performance of this Agreement. ALC shall execute such further instruments and documents which any party hereto shall deem necessary or advisable in order more effectively to carry out the provisions of this Agreement, and all such instruments and documents shall be satisfactory in form and substance to counsel for each party hereto.

12. Any notice required or permitted to be given hereunder shall be deemed duly given if sent by certified mail, postage prepaid, addressed to any party to this Agreement at its address as it appears on the first page of this Agreement or at such other address as may be furnished in writing by any such party by written notice to all other parties to this Agreement.

13. No failure on the part of any of the Lessors, the Banks, or DEC to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

14. This Agreement shall be governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the day and year first above written.

APPLIED LOGIC CORPORATION

By Martin J. McLeod
Executive VP

CHASE MANHATTAN BANK

By Arthur W. Northrop Jr.
Assistant Treasurer

FIRST NATIONAL CITY BANK

By J. L. K. Ross

FIRST NATIONAL BANK OF PRINCETON

By S. S. Swartz
V.P.

NEW JERSEY NATIONAL BANK

By Marcel L. G.
V.P.

A/L LESSORS

By Isidore V. Lang

BOSTON LEASING CORPORATION

By Carl Long Jr.
President

CIC LEASING CORP.

By Z. Swihusen
Senior V.P.

CIT LEASING CORP.

By J. Kump Jr.
V.P.

COLGATE RESEARCH & DEVELOPMENT CO.

By Paul M. Colgate

DIGITAL EQUIPMENT CORP.

By Winston R. Handli Jr.
Vice President

Schedule A

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
6	MA10	Core Memories	197, 187, 139, 194, 207, & 193
3	KA10	Arithmetic Processors	111, 105, 117
3	KM10	Fast Registers	111, 105, 117
3	KT10A	Dual Memory Protectors	111, 105, 117
1	MA10	Core Memories	152
1	KT10A	KT10 Update Modification	5
100	PDP-10	Reference Cards	NONE
10	PDP-10	Interface Manuals	NONE
18	PDP-10	Reference Handbooks	NONE
2	MC10	Add Memory Processors	NONE
2		Auto Tape Controllers	NONE

(continued)

Defendant's Exhibit D (Continued)

A-432

<u>Quantity</u>	<u>Item</u>	<u>Description</u>	<u>Serial Numbers</u>
1	* PDP-8	Central Processor	1491
6	PDP-8/680	Central Processors	1490,1233,1303,141 1493,1471
7	ASR-33	Teletypes	202848,210145,2100 202834,202835,2027 210089
6	681	Serial Line Adapters	127,60,122,121,119 118
6	685	Serial Line Multiplexers	114,113,118,115,10 60
8	689M	Panels	136,134,133,137,14 149,142,145
6	Cab 8I	Cabinets	NONE
7	Cab 8B	Cabinets	NONE
384	W750	Teletype Line Units	NONE
288	689MI	Modem Interface Adapters	NONE
4	689MA	Modem Interface Adapters	109,140,123,137
1	PDP-8	Software Kit (write-ups & tapes)	NONE
1	74-05668	Indicator Panel #2	NONE
1	74-5534	Cover Retainer	NONE

*Notwithstanding the provisions of Sec. 3 of the agreement to which this Schedule A is made a part, it is stipulated that Serial #1491 PDP-8 Processor has been and will continue to be used by ALC in connection with development of a new type communications processor.

4,
22
94

,
9
3

SCHEDULE AA

Page 1

Summary of Facilities Management AgreementsCIC Leasing Company

<u>Lessor & Lease #</u>	<u>Lease Amount Monthly</u>	<u>Total Due Leasing Co.*</u>	<u>Mgt. Fee to Associate</u>	<u>Last ALC Payment</u>	<u>Period</u>	<u>Last Assoc. Payment to Lessor</u>	<u>Period</u>	<u>Associate Delinquency</u>	<u>Month of Moratorium 7/1/70-7/31/70</u>	<u>Amount of Moratorium (Col. 3 x 1)</u>
CIC - FMA										
CDI - 35943 (Boston)	\$5,420.00	\$5,420.00	\$300.00	--	7/10/70	July	July	No	12	\$65,040.00
CSI - 35941 (East Orange)	5,420.00	5,420.00	300.00	\$50.00	6/2/70	June	June	1 Mo. - July	12	65,040.00 ²⁾
36039 (NYC)	5,420.00	5,420.00	300.00	--	7/10/70	July	July	No	12	65,040.00
CTG - 36040 (NYC)	5,420.00	5,420.00	300.00	--	6/2/70	June	June	1 Mo. - July	12	65,040.00 ¹⁾
35940 (Syracuse)	1,471.00	1,471.00	100.00	50.00	7/10/70	July	July	No	12	17,652.00
35939 (Buffalo)	5,420.00	5,420.00	300.00	50.00	7/10/70	July	July	No	12	65,040.00
ISC - 36037 (Annapolis)	5,420.00	5,420.00	300.00	--	6/2/70	June	July	No	12	65,040.00
35942 (DC)	5,420.00	5,420.00	300.00	50.00	6/2/70	June	June	1 Mo. - July	12	65,040.00 ³⁾
ACT - 35932 (Chicago)	5,420.00	5,420.00	300.00	--	7/10/70	July	May	2 Mo. - June, July	12	65,040.00 ⁴⁾
36099 (Dallas)	5,420.00	5,420.00	300.00	--	6/2/70	June	May	2 Mo. - June, July	12	65,040.00 ⁵⁾
Subtotal 50,251.00 2,800.00 200.00										Subtotal 603,012.00

1) CTG - 36040 - ALC one payment ahead - no payment to Associate for July to get current. Associate failed to pay leasing company.

2) CSI - 35941 - " " " " " " " " " " " "

3) ISC - 35942 - " " " " " " " " " " " "

4) ACT - 35932 - Associate failed to forward payments for June - July to leasing company.

5) ACT - 36099 - " " " " " " " " " " " "

*This amount does not include applicable sales tax or personal property tax where applicable.

Def. Ex. D
(Continued)

A-433

SCHEDULE AASummary of Lease Payments as of 7-1-70

<u>Lessor & Lease No.</u>	<u>Monthly Payment</u>	<u>Last ALC Pay- ment Date</u>	<u>Period Covered</u>	<u>7-1-70/7-31-71 No Months Moratorium</u>	<u>Amt of Moratorium</u>	<u>Notes</u>
Colgate R&D	\$12,500.00	6/2/70	June	7 + 1	\$ 100,000.00	1. Last month's payment due 1-1-71 2. Annual payment of \$12,500.00 for 1971 due 2-1-71
CIT	35,610.91	5-22-70	5-21-70/ 6-20-70	14	499,552.74	June not paid
Boston Leasing	30,998.49	6-22-70	June	13	402,980.37	
A/L Lessors	25,978.78	6-2-70	May	13	337,724.14	June not paid
Subtotal	\$105,088.18			Subtotal	\$1,340,257.25	
<u>CIC Leasing (Old multi-plexors paid by ALC direct)</u>						
KPA 35700	376.48	7-9-70	July	12	4,517.76	
KPA 35701	478.40	7-9-70	July	12	5,740.80	
KPA 35702	478.40	7-9-70	July	12	5,740.80	
KPA C7529	549.12	7-9-70	July	12	6,589.44	
ISC 35725	548.00	7-9-70	July	12	6,576.00	
ISC 35722	548.00	7-9-70	July	12	6,576.00	
BCA C7511	1,038.74	7-9-70	July	12	12,464.88	
CTG 35703	575.40	7-9-70	July	12	6,904.80	
Subtotal	\$4,592.54			Subtotal	\$55,110.48	

Def. Ex. D (Cont'd.)

SCHEDULE AA ContinuedSummary of Lease Payment, as of 7-1-70

<u>Lessor & Lease No.</u>	<u>Monthly Payment</u>	<u>Last ALC Payment Date</u>	<u>Period Covered</u>	<u>7-1-70/7-31-70 No Months Moratorium</u>	<u>Amount of Moratorium</u>	<u>Notes</u>
CIC Leasing (Furniture paid by ALC direct)						
36165	\$ 412.86	7-9-70	July	12	4,954.32	
36231	192.95	7-9-70	July	12	2,315.40	
36056	440.15	7-9-70	July	12	5,281.80	
36274	152.66	7-9-70	July	12	1,831.92	
36196	269.08	7-9-70	July	12	3,228.96	
36181	214.80	7-9-70	July	12	2,577.60	
Subtotal	\$1,682.50			Subtotal	\$20,190.00	
				GRAND TOTAL	\$2,018,569.73	

Recapitalization Agreement dated
September 15, 1971 with attach-
ments.

(Heretofore reproduced at pages
A-61 through A-82)

DEFENDANT'S EXHIBIT E IN EVIDENCE

Letter dated 3/2/72, New Jersey National Bank to
ALC, directing current aging of accounts receiv-
able to be sent each month to Credit Department.



ONE WEST STATE STREET • TRENTON, NEW JERSEY 08603 • (609) 989-7700

MICHAEL S. LYNCH
VICE PRESIDENT

RECEIVED

MAY 10 1972

MAY 10 1972

PT.

1972

March 3, 1972

Dr. Francis C. Oglesby
Applied Logic Corporation
One Palmer Square
Princeton, New Jersey 08540

Dear Frank:

In accordance with the Recapitalization Agreement, we are to receive a
current aging of your accounts receivable each month. These agings
should be sent directly to our Credit Department.

Sincerely,

M.S. Lynch
Vice President

3-8-72

Bob,

*Just the summary page should be
sent. It should be the aging which includes
current month charges, ie, as age as possible.
Could you see that the Feb 1 aging is sent
& that Vera sends it each month.*

*Ths
Frank*

Ex. For Id
Exhibit in Evid. *E*

JUN 16 1975

Beatrice R. Gottlieb

DEFENDANT'S EXHIBIT F IN EVIDENCE

Letter dated 1/18/72 from ALC to New Jersey
National Bank enclosing summary of accounts
receivable aged as of 1/1/72.

January 18, 1972

LEY Ex. For Id
Exhibit in Evld. *F*

JUN 16 1975

Mr. Michael S. Lynch
Vice President
New Jersey National Bank
One West State Street
Trenton, New Jersey 08601

Beatrice R. Gottlieb

Dear Mike:

Enclosed, per the Recapitalization Agreement, is a copy of the
summary page of the accounts receivable aging as of January 1, 1972.

Very truly yours,

APPLIED LOGIC CORPORATION

Robert L. Koteles
Accounting Manager

RLK/jw

enclosure

STIPULATED EXHIBIT

Computer printout of monthly aging of ALC
accounts receivable covering period between
7/18/74 and 8/10/74.

(Pages A-440 through A-460 following)

APPLIED LOGIC CORPORATION

ASSOCIATE SUMMARY
01/01/72

AGING ANALYSIS

ASSOC NO.	ASSOCIATE NAME	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS AND PRIOR
1	ALC	0.00	0.00	0.00	0.00	0.00	0.00
2	PRDEM	0.00	0.00	0.00	0.00	0.00	0.00
1001	HOUSE	54462.97	24897.65	15559.68	4960.98	2081.92	6962.7
1002	CDI	70479.81	3554.44	4572.75	57.21	-3.06	62298.47
1003	CSI	22612.50	-314.64	-327.67	-288.45	-599.96	24143.22
1004	CTG	-0.27	0.00	0.00	0.00	0.00	-0.27
1007	IMC	8065.55	0.00	0.00	0.00	0.00	8065.55
1012	CSIDIR	12739.66	4011.47	4970.81	1605.52	137.04	2014.82
1013	PRIME	1341.15	0.00	0.00	0.00	0.00	1341.15
1014	NYCSC	57407.58	33827.58	12588.86	3770.10	2084.62	5136.42
1015	LASC	38159.43	7798.36	4559.47	2670.45	68.40	23062.75
1016	SFSC	36388.99	31234.64	2702.13	513.13	482.64	1456.45
1017	CXSC	12515.73	10601.03	1295.02	255.77	241.41	122.50
1020	WASC	54971.64	14127.66	17648.16	3266.27	7857.05	12072.5
1021	PHSC	23750.01	12003.59	2356.28	2201.18	4208.86	2980.10
1023	INDS	14516.80	12587.56	-280.00	100.00	100.00	2009.24
1024	FNCRCSS	16052.18	13420.09	1758.70	300.01	251.00	322.38
4777	R & D	0.00	0.00	0.00	0.00	0.00	0.00
5001	INA	0.00	0.00	0.00	0.00	0.00	0.00
9000	MISC	28533.47	14643.99	14609.99	0.00	12.00	-732.51
OVERALL ASSOCIATE TOTALS		451997.21	182393.42	82014.18	19412.17	16921.92	151255.51

ALG 10/3/72

APPLIED LOGIC CORPORATION

ASSOCIATE SUMMARY
08/01/72

AGING ANALYSIS

ASSOC NO.	ASSOCIATE NAME	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS AND PRIOR
1	ALC	0.00	0.00	0.00	0.00	0.00	0.00
1001	HOUSE	25239.64	16794.70	2801.79	1449.14	967.45	3226.56
1002	CDI	59055.00	2466.18	1758.87	310.19	0.00	545.9.76
1003	CSI	17425.33	-359.44	-617.49	-392.96	114.10	18681.12
1007	IHC	0.00	0.00	0.00	0.00	0.00	0.00
1012	CSIDIR	7195.85	2763.64	3239.41	48.03	66.88	1077.89
1014	NYCSC	54948.27	36317.35	9520.00	1507.07	774.39	6829.46
1015	LASC	11153.75	6309.83	1479.05	2081.39	324.63	958.85
1016	SFSC	11081.63	5452.04	2255.44	2504.03	182.77	687.35
1017	CXSC	5953.43	2670.21	1826.74	1103.04	248.48	104.98
1020	WASC	200415.66	91130.44	76667.94	14261.08	4786.57	13567.63
1021	PHSC	37069.73	24156.76	4875.41	6422.31	1657.96	-42.71
1023	INUSC	13110.68	7145.68	5965.00	0.00	0.00	0.00
1024	FNCBCSS	40531.75	26524.60	8240.92	1249.00	2294.81	2222.42
1077	RESDEV	26447.27	26447.27	0.00	0.00	0.00	0.00
1001	INA	0.00	0.00	0.00	0.00	0.00	0.00
1000	MISC	55056.06	26557.49	14609.99	14609.99	0.00	-721.41
OVERALL ASSOCIATE TOTALS		564684.07	274376.75	132623.07	45152.31	11420.04	101111.90

SEP 19 1972

APPLIED LOGIC CORPORATION

ASSOCIATE SUMMARY
09/01/72

AGING ANALYSIS

ASSOC. NO.	ASSOCIATE NAME	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS AND PRIOR
1	ALC	0.00	0.00	0.00	0.00	0.00	0.00
1001	HOUSE	22137.07	15695.57	2956.56	614.46	175.31	2695.17
1002	COI	58922.26	1630.34	2466.18	305.98	0.00	54519.76
1003	CSI	17204.83	-220.50	-359.44	-617.49	-392.96	18795.22
1007	IMC	0.00	0.00	0.00	0.00	0.00	0.00
1012	CSIDIR	7171.56	3517.15	2610.19	142.03	-122.30	1024.49
1014	NYCSC	51278.33	32235.99	8242.18	2930.88	1148.15	6721.13
1015	LASC	68157.63	33712.70	30875.82	217.29	2078.94	1272.88
1016	SFSC	10536.38	5053.84	3259.82	389.76	1473.74	359.22
1017	CXSC	6190.91	2289.52	2000.41	1547.52	0.00	353.46
1020	WASC	203311.37	76868.65	89418.32	21219.30	987.05	14818.05
1021	PHSC	34405.62	26033.21	6100.24	2720.59	103.08	-51.50
1023	INDSC	8161.20	4625.52	3415.15	120.53	0.00	0.00
1024	FNCRCS	41973.31	29364.13	9256.08	334.64	607.50	2410.96
5000	UNK	0.00	0.00	0.00	0.00	0.00	0.00
5001	INA	0.00	0.00	0.00	0.00	0.00	0.00
5000	MISC	53488.96	30481.48	23728.89	0.00	0.00	-721.41
OVERALL ASSOCIATE TOTALS		583439.48	261287.60	183970.40	29925.49	6058.51	102197.43

UNAUDITED

ASSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	27,218.17	17,065.81	5,888.56	1,179.67	566.56	2,517.57
CDT	3,226.79	1,581.08	1,630.34	318.66	305.98	609.27
CS101	7,932.12	3,443.88	3,331.43	144.70	100.00	712.11
NYSC	50,721.55	29,754.16	10,214.51	1,561.36	1,315.98	7,873.54
LASC	66,741.52	31,245.95	32,542.94	56.58	204.44	2,691.61
SSC	5,477.31	2,625.30	1,435.37	578.50	346.00	492.14
CRIC	5,254.33	1,861.18	1,300.46	1,844.21	2,996.44	14,488.68
WASC	239,491.55	114,230.66	73,033.88	34,751.89	2,560.94	33.23
PHSC	37,986.88	22,441.08	8,704.79	4,046.85	10.00	2,286.96
THSC	4,690.24	5,569.23	3,111.01	734.52	79.61	721.41
FIN-NCSS	41,625.43	28,797.94	9,726.40			
MTSC	57,602.21	58,123.48				

OVER-ALL TOTALS

551,968.10 317,339.75 150,921.68 45,217.08 8,475.95 30,013.64

ASSOCIATE SUMMARY

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	57,928.68	37,631.91	13,374.00	3,577.74	451.97	2,893.06
CDT	3,429.49	1,532.37	1,581.08	300.67	318.66	303.29
NYCSC	56,747.13	35,220.02	5,147.06	5,135.97	1,544.17	9,749.93
IFSC	70,842.88	34,074.70	29,861.67	3,231.25		2,775.26
SFSC	5,388.85	3,834.60	906.44	286.73	358.94	492.14
CRIC	3,292.61	2,572.72	173.57		546.32	
WISC	232,654.20	58,974.11	110,271.80	16,014.56	32,546.81	14,826.92
PMSC	41,273.19	24,349.50	10,102.20	4,155.47	2,744.41	78.39
IMISC	12,076.11	7,476.43	4,549.68			10.00
FINCROSS	45,619.89	31,880.57	8,336.91	2,851.59	375.30	2,175.52
HTIC	120,409.32	62,897.11	58,323.48		.14	721.41

OVER-ALL TOTALS

650,262.35 301,344.04 242,627.87 35,553.98 38,916.72 31,819.74

OCIATE SUMMAR

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	65,468.66	38,122.94	22,676.56	583.54	804.00	3,281.62
COI	3,328.09	1,174.30	1,522.81	314.94	300.67	15.37
NYCSC	56,429.47	32,411.73	8,044.42	3,931.68	2,446.86	9,994.78
LASC	77,173.86	33,678.58	32,695.70	7,962.34	61.98	2,775.26
SFSC	6,624.58	3,098.68	1,706.26	632.85	185.05	1,001.74
CAC	3,149.32	1,600.91	883.84	162.66		541.91
WASC	185,963.45	33,817.71	57,163.90	33,691.46	15,325.40	45,964.98
PHSC	57,432.14	38,081.05	10,792.62	4,214.40	4,155.47	188.60
INDSC	10,611.44	4,511.04	6,026.64	63.76		10.00
FINCSS	53,767.74	34,666.92	12,258.24	2,433.31	2,028.21	2,379.06
MISC	125,364.81	63,188.97	62,897.11			721.27

ALL TOTALS

645,753.56	284,354.83	216,668.10	53,990.94	25,307.64	65,432.05
------------	------------	------------	-----------	-----------	-----------

ASSOCIATE SUMMARY

SSC	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
H HSE	33,799.05	22,339.38	6,132.28	2,251.46	412.61	2,663.32
DOT	6,990.72	3,461.35	3,520.86		2.76	5.75
NYCSC	50,663.68	32,885.45	12,741.56	1,231.04	461.39	3,344.24
L SC	85,019.77	44,020.38	35,330.37	2,648.25	290.81	2,729.96
SFSC	6,421.29	3,640.20	1,377.92	128.17	17.75	1,257.25
CRIC	2,136.42	1,751.21	814.63	31.42		
W C	49,705.85	25,287.86	26,619.85	17,789.54	5,085.92	14,522.68
PHSC	44,133.48	19,779.01	8,059.05	10,841.42	5,503.97	590.03
INOSC	3,263.87	3,248.92	11.55			
F CPCS	56,018.52	38,660.58	9,791.67	4,962.58	430.83	2,972.96
MISC	185,764.81	44,609.99	44,609.99	48,576.98	48,287.12	721.27

VFR-ALL TOTALS

564,117.46 238,846.33 149,009.63 88,403.42 60,493.16 27,360.92

Applied Logic Corporation

APPLIED LOGIC CORPORATION

SYSTEMS OF 2128/11

REPORT GENERATED ON 03/04/73 1420 HRS

MAR 9 1973

PAGE 043

SUMMARY

ISSU	TOTAL DUE	CURRENT	30-DAYS	60-DAYS	90-DAYS	120-DAYS
ISS	50,474.53	35,412.32	10,434.94	3,234.02	402.58	390.67
	5,415.21	2,343.44	3,461.35	1.91		8.51
SC	65,417.68	45,434.64	12,307.15	9,448	1,042.53	734.68
C	85,374.73	33,765.18	42,674.57	4,265.22	1,838.66	2,000.10
	6,601.58	3,162.91	1,076.29	261.14	126.19	1,275.00
C	1,457.18	1,102.69	485.91		31.42	
C	12,122.99	25,399.28	23,417.07	22,231.86	15,178.65	33,416.13
	41,441.48	22,885.77	9,821.28	2,798.66	3,547.81	1,987.96
ISS	5,407.51	5,130.86	276.65			
CBS	60,361.30	33,635.42	20,204.04	4,914.92	4,433.92	3,173.09
	22,136.81	49,609.99	44,609.99	30,000.00	48,578.98	47,565.85

=====

TOTALS	644,759.04	234,102.50	169,174.24	68,646.26	75,137.90	91,358.19
--------	------------	------------	------------	-----------	-----------	-----------

=====

File

APR 13 1973

APR 13 1973

SSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
W. S.	71,220.70	46,818.54	20,000.21	2,717.11	1,252.83	432.01
W. S.	5,751.44	3,404.56	2,343.44	3.52	1.91	8.51
W. S.	69,469.27	57,025.70	7,519.39	2,165.75	739.13	1,904.30
W. S.	106,193.34	39,465.57	30,519.87	34,938.18		3,169.72
W. S.	8,456.41	3,860.73	3,158.59	310.72		1,126.37
W. S.	1,496.00	1,272.60	489.91	104.91		31.42
W. S.	131,051.30	23,600.83	24,850.61	21,935.94	15,731.89	44,932.03
W. S.	34,172.94	24,739.96	11,685.88	1,221.09	155.00	1,371.03
W. S.	12,011.55	11,499.58	891.97			
W. S.	71,167.23	39,258.83	10,606.25	9,688.78	4,123.30	7,490.07
W. S.	144,428.64	55,539.92	49,609.99			721.27

W. S. TOTALS

623,394.34 306,976.82 161,676.11 73,146.00 22,004.06 59,681.35

FILE

ASSOCIATE SUMMARY

ASS	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	65,197.36	36,433.48	25,605.95	1,825.55	505.48	326.90
CC	5,445.31	2,247.34	3,534.56	33.47	3.52	10.42
NYSC	70,471.91	36,559.12	32,031.68	4,259.54	1,642.95	1,978.62
LFSC	125,151.57	50,203.76	36,617.29	3,245.87	33,478.12	1,506.49
SFSC	8,676.97	4,540.31	3,367.42	110.68		618.56
CRSC	1,419.44	962.02	657.62		.20	
WTC	114,306.87	28,542.15	23,127.43	544.30	9,418.49	52,584.50
PRSC	43,464.99	27,740.87	10,111.60	3,414.77	1,221.09	1,476.66
TRSC	15,467.30	8,001.12	6,577.66	844.52		
FRACSS	44,151.15	44,474.28	19,231.19	4,187.84	4,438.52	11,318.32
WISC	131,432.66	56,274.00	40,929.93	35,000.00		721.27

MAY 14 1973

FR-ALL TOTALS

672,175.49 296,969.45 201,852.33 53,546.54 50,707.97 69,099.20

RECEIVED

MAY 15 '73

CREDIT DEPARTMENT

A-449

ASSOCIATE SUMMARY

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	62,485.27	39,983.65	12,269.98	9,058.04	1,056.89	116.71
COI	4,595.55	2,124.58	2,243.34	180.22	33.47	13.94
NYASC	79,147.29	34,200.77	12,338.26	25,732.55	3,990.46	3,085.24
IFSC	127,141.65	42,496.53	46,812.80	2,574.79	422.04	34,735.49
SFSC	10,472.14	5,129.83	2,473.72	2,139.35	110.68	618.56
EXFC	1,740.36	1,107.23	533.13	100.00		
WFC	89,630.08	20,466.13	17,537.85	20,744.01	10,246.71	20,635.38
PHSC	48,940.45	24,908.17	18,303.86	3,901.00	140.51	1,687.01
INDSC	17,267.08	10,111.54	3,814.86	3,035.37	105.31	
FINANCSS	88,013.41	44,592.99	20,687.77	4,966.76	4,113.01	13,652.88
MISC	188,573.73	56,991.21	56,274.00	40,929.93	35,000.00	721.41
.....						
.....						
.....						
OVER-ALL TOTALS	718,007.10	282,212.63	193,289.57	113,462.02	55,219.08	73,823.80

ASSOCIATE SUMMARY

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	59,946.83	39,216.25	13,486.18	4,205.61	6,097.94	940.89
CDI	3,061.00	848.43	2,124.58	5.06	35.52	47.41
NYCSC	90,995.51	57,717.64	12,529.72	6,940.67	7,711.59	6,095.89
LASC	128,701.86	31,975.59	39,976.24	20,692.49	1,329.14	34,728.40
SFSC	7,532.00	4,689.49	1,243.81	966.44	10.73	621.61
CASC	2,179.30	1,447.11	501.59	230.60		
WASC	76,256.54	16,638.22	15,576.99	5,837.79	8,482.27	29,721.27
PHSC	40,946.09	22,871.53	11,690.30	5,414.66		969.60
INDSC	19,741.72	11,124.87	2,905.71	3,180.18	2,425.65	105.31
FNCHCSS	81,454.25	45,497.19	19,763.49	2,220.52	535.91	13,437.14
MISC	173,763.74	14,609.99	42,281.22	41,664.01	40,929.93	34,278.59

OVER-ALL TOTALS

684,578.92 242,636.31 162,079.83 91,358.03 67,558.68 120,946.07

JUL 17 1973

AUG 16 1973

SOCIATE SUMMARY

ASSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	52,913.71	31,190.96	19,245.27	455.45	652.79	1,369.24
INT	131.17		219.16		5.06	82.93
NYCSC	106,927.01	51,473.37	37,197.51	5,728.96	3,641.12	8,886.05
LFSC	125,493.89	23,968.77	29,227.85	16,979.53	19,460.20	36,057.54
SFSC	7,169.21	5,509.33	738.69	12.19	378.18	530.82
CRFC	2,106.20	1,274.84	1,027.78	3.58		
WFC	165,989.48	26,492.51	26,527.07	15,137.65	776.89	37,055.36
PHFC	42,479.06	22,796.25	11,757.40	4,167.15	2,798.66	969.60
INDSC	17,848.79	6,951.01	2,707.48	2,479.16	3,180.18	2,530.96
FINANCES	86,254.21	41,768.38	21,627.65	7,389.62	2,022.94	13,845.62
MISC	233,419.73	59,655.99	14,609.99	42,281.22	41,664.01	75,208.52

R-ALL TOTALS

780,870.12 270,881.41 164,447.53 94,634.51 74,570.03 176,536.64

File

ASSOCIATE SUMMARY

ASSN	TOTAL DUF	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	42,494.34	22,014.22	14,746.36	4,267.83	178.45	1,287.48
NYCSC	123,591.59	39,608.83	32,225.66	35,318.21	5,516.39	10,922.50
LASC	96,600.81	16,435.64	22,391.00	7,129.75	3,849.14	46,795.28
SFSC	5,060.61	4,560.38	506.51	1.68		892.04
CXSC	2,137.56	952.04	840.11	345.41		
WASC	142,955.05	38,832.39	35,615.63	18,794.19	12,504.11	37,208.73
PHSC	41,494.87	22,429.29	10,655.39	3,652.58	4,057.61	300.00
INDSC	19,945.24	8,202.99	1,273.46	2,287.63	2,479.16	5,702.00
ENCRCS	71,914.10	33,395.83	14,550.69	4,071.89	3,933.22	15,962.47
MISC	254,802.67	35,992.93	59,655.99		42,281.22	116,872.53

OVER-ALL TOTALS

801,496.84 222,424.54 192,460.80 75,869.17 74,799.30 235,943.03

file

ASSOCIATE SUMMARY

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	25,160.78	18,310.26	5,052.29	184.64	145.66	1,465.93
HYGSC	131,577.95	51,626.78	19,154.89	20,337.55	24,244.42	16,284.31
ITSC	88,795.41	11,858.14	16,195.64	10,018.24	273.65	50,449.74
SFSC	4,861.22	3,532.02	274.00	159.16		892.04
CVSC	1,342.13	902.32	839.23	200.58		
WASC	115,179.78	26,716.30	37,563.63	25,414.19	2,927.11	22,556.55
PLSC	36,440.16	18,940.09	10,528.04	2,304.68	309.74	4,357.61
INDSC	17,007.39	6,674.68	1,771.26	1,121.78	2,297.63	5,152.04
FINSCSS	77,451.56	27,727.34	13,489.59	12,705.35	4,071.89	19,857.39
MSC	155,138.02	60,294.51	35,942.93	59,621.99		721.41

OVER-ALL TOTALS

654,054.40 226,592.44 140,815.50 132,070.16 34,280.10 120,296.20

SOCIETY SUMMARY

ASSN	TOTAL DIF	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	42,040.85	29,400.53	8,255.61	3,697.51	122.91	1,564.29
HYPER	148,466.03	46,779.40	30,493.72	17,233.85	20,144.45	34,170.61
FACE	82,299.00	13,254.45	11,567.44	6,246.81	444.71	50,745.59
SPCC	5,505.04	4,045.77	565.73		1.50	892.04
RYCC	1,462.14	882.85	372.89	204.40		
WAGE	120,260.85	30,510.76	20,891.86	11,774.35	20,344.83	16,695.05
PHSC	44,919.00	23,813.57	11,498.28	7,348.94	1,955.91	302.30
INDSC	24,096.15	8,707.51	6,149.61	1,191.29	962.07	7,439.67
FINANCE	82,994.49	31,745.91	9,957.79	7,313.85	12,809.50	21,168.43
HTSC	155,612.32	44,704.27	45,684.52	21,332.94	45,012.00	721.41

2-ALL TOTALS

707,645.86 231,641.02 145,477.45 96,385.94 101,894.88 132,256.57

ACCOUNT SUMMARY

ASSN	TOTAL DUE	PERCENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	79,626.40	21.729.46	24,936.92	2,051.05	3,308.20	19,000.47
HYDRO	51,578.40	24,417.52	25,530.47	107.97	208.74	1,687.20
LAND	78,677.96	16,150.25	8,357.89	3,571.71	387.33	10,210.76
SEED	73,943.36	15,747.40	12,907.85	1,474.17	2,024.53	40,947.41
CRIC	7,344.80	3,750.17	2,902.03	188.09		573.71
CRIC	1,431.72	517.66	322.02	172.04		
CRIC	144,704.01	27,617.50	28,244.98	20,791.86	30,769.79	37,083.48
CRIC	48,395.21	22,717.29	14,827.94	6,012.11	2,717.32	2,059.57
CRIC	22,445.23	10,646.22	1,577.04	1,400.44	1,191.29	7,744.74
CRIC	86,036.70	34,644.35	14,144.31	3,406.80	2,865.37	31,523.47
CRIC	194,668.38	39,644.96	44,304.27	45,684.52	21,332.94	44,290.59

.....

GRAND TOTALS 739,362.17 216,166.09 178,053.72 84,783.56 64,396.01 195,152.40

CIATE SUMMARY

JAN 14

ASSO	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	73,627.53	43,912.51	17,829.49	10,344.64	91.75	1,450.04
NYCSC	27,459.70	12,116.31	1,804.29	224.01	3,146.61	10,169.48
LASC	77,026.21	13,973.20	15,586.74	3,390.44	1,476.17	42,599.66
SFSC	5,247.05	4,468.51	504.39	75.35		199.71
CXSC	1,069.64	790.43	279.21			
ASC	161,080.55	27,702.96	22,502.55	22,792.39	20,229.07	67,853.67
PHSC	50,699.52	21,643.29	14,693.10	9,318.50	4,992.97	61.57
INDSC	23,667.94	7,819.59	10,452.91	1,463.78	1,400.44	2,531.22
FNCRCS	84,069.15	35,532.54	7,251.93	4,148.85	3,161.90	33,972.93
FNCRINT	55,554.69	20,964.96	12,921.77	5,965.97	1,669.22	14,032.77
WISC	190,612.32	4,056.06	35,000.00	40,248.21	45,694.52	65,623.53

ALL TOTALS	750,113.30	192,980.45	138,815.38	97,972.24	81,852.65	239,492.59
------------	------------	------------	------------	-----------	-----------	------------

ASSOCIATE SUMMARY

ASSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	46,238.81	30,202.74	5,911.06	4,559.47	3,850.17	1,715.37
NYCSC	26,443.02	12,367.04	2,327.73	1,049.56	18.49	10,757.18
LASC	82,629.89	10,995.47	9,465.28	13,989.92	10,920.61	37,258.61
SFSC	6,638.13	3,839.50	2,695.59	103.04		
CXSC	1,438.18	780.69	657.49			
WASC	87,900.12	23,590.86	18,120.42	23,595.30	2,532.59	20,060.95
PHSC	43,503.64	26,849.03	13,648.21	1,991.48	241.52	773.40
INDSC	34,805.36	6,472.07	5,518.84	1,457.70	1,620.09	19,736.66
FNCBCSS	111,802.81	47,126.51	12,596.35	8,049.00	7,299.49	36,731.66
FNCBINT	76,762.57	18,288.47	19,762.01	15,079.15	3,210.58	20,442.36
MISC	15,846.45	4,056.06	4,056.06	7,734.33		

OVER-ALL TOTALS 534,008.98 184,568.44 94,739.04 77,568.95 29,656.56 147,475.99

RECEIVED

MAY 23 74

CRED. I.D. R.

ASSOCIATE SUMMARY

ASSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	36,122.06	26,769.79	5,070.35	3,468.56	1.85	811.51
NYCSC	23,405.61	12,505.79	706.79	597.35	1,338.50	8,257.18
LASC	19,707.23	6,822.92	5,835.36	745.42	923.90	5,379.63
SFSC	4,767.37	4,727.87	21.30		18.20	
CKSC	1,535.88	997.27	308.22	267.56	37.17	
WASC	60,931.10	25,924.52	14,078.15	312.99	452.66	20,162.78
PHSC	32,535.84	23,745.95	8,682.04	205.92	444.48	142.55
INDSC	26,617.06	4,733.93	4,262.81	1,757.55	1,481.74	14,381.03
FHCRCSS	115,545.28	47,788.45	11,410.92	2,912.69	2,849.22	50,584.00
FHCINT	58,709.42	14,283.57	11,367.80	8,478.24	1,998.22	22,581.59
MISC	15,846.45	4,056.06	4,056.06			7,734.33

OVER-ALL TOTALS 395,723.30 171,956.12 65,799.80 18,746.28 9,471.60 129,749.50

JUL 1 1974

LIFE LOGIC CORPORATION

NG ANALYSTS AS OF 6/30/74

REPORT GENERATED ON 07/03/74 1152 HRS

PAGE 037

DETAILED SUMMARY

ASSN	TOTAL DUE	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS
HOUSE	39,831.04	19,472.06	16,449.62	2,421.10	674.90	813.36
NYCSC	25,663.04	15,703.73	1,327.41			8,631.90
LASC	20,500.23	7,706.95	6,710.46	845.05	745.42	4,492.35
SFSC	4,807.00	4,460.47	328.33			18.20
CXSC	1,843.07	839.61	566.13	206.94	267.56	37.17
WASC	72,145.25	18,447.45	21,625.20	13,680.55	61.69	18,330.36
PHSC	32,014.17	18,283.39	11,039.55	2,187.97	201.33	301.93
INDSC	23,404.95	4,811.61	4,019.32		818.14	13,755.88
FNCRCSS	175,513.64	44,450.37	17,187.85	4,921.68	2,121.75	46,831.99
FNCRINT	52,715.80	11,194.71	14,020.93	1,941.87	1,972.18	23,186.11
MISC	15,846.45	4,056.06	4,056.06			7,734.33

R-ALL TOTALS

403,884.64	149,426.41	97,330.86	26,205.16	6,862.97	124,059.24
------------	------------	-----------	-----------	----------	------------

A-460

ORDER DATED AUGUST 10, 1976 ADJUDICATING
DEBTOR-IN-POSSESSION BANKRUPT AND APPOINT-
ING DANIEL A. GUTTERMAN AS TRUSTEE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In the Matter	:
	: In Proceedings for
-of-	: An Arrangement:
	:
APPLIED LOGIC CORPORATION,	: No. 75 B 491
	:
Debtor.	: ORDER ADJUDICATING THE
	: DEBTOR A BANKRUPT AND
	: <u>DESIGNATING A TRUSTEE</u>
-----X	

The above Debtor having filed a petition for an arrangement under §322 of the Bankruptcy Act; and

It being the opinion of this Court that in the interest of creditors the Debtor should be adjudged bankrupt and that bankruptcy should be proceeded with pursuant to the provisions of the Bankruptcy Act.

NOW, upon all the proceedings heretofore had herein and due deliberation having been had, it is

ON MOTION of OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C., attorneys for the Creditors' Committee,

ORDERED, ADJUDGED AND DECREED, that APPLIED LOGIC CORPORATION be, and the same hereby is declared and adjudged bankrupt and the bankruptcy be proceeded with under the Bankruptcy Act; and he is further

Order dated August 10, 1976

A-462

ORDERED, that Daniel A. Gutterman, 230 Park Avenue, New York, New York be, and he is hereby approved as Trustee in Bankruptcy of APPLIED LOGIC CORPORATION and his bond is fixed in the sum of \$1,000.00, as Trustee of the aforementioned Bankrupt, which bond is to be filed within five (5) days from date hereof.

Dated: New York, New York
August 10, 1976.

/s/ Roy Barrett

BANKRUPTCY JUDGE

MEMORANDUM OPINION AND DECISION OF
BANKRUPTCY JUDGE BABITT DATED DECEMBER 9, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In the Matter of
APPLIED LOGIC CORPORATION,
Debtor-Bankrupt

OPINION
75B491

-----x
NEW JERSEY NATIONAL BANK,
Plaintiff,
APPLIED LOGIC CORPORATION,
Defendant.

FILED

DEC 9 - 1976

JOHN BABITT
BANKRUPTCY JUDGE

-----x
APPEARANCES

* * * * *

Teich, Groh & Robinson, Esqs.
143 East State Street
Trenton, New Jersey 08608
Attorneys for Plaintiff
By: Leon M. Robinson, Esq.,
of counsel.

Coudert Brothers
Pan American Building
200 Park Avenue
New York, New York 10017
Attorneys for Debtor
By: Mark D. Lebow,
Andrew S. Hedden,
Anthony Williams, Esqs.,
of counsel.

Otterbourg, Steindler, Houston & Rosen, Esqs.
230 Park Avenue
New York, New York 10017
Attorneys for Trustee in Bankruptcy
of Applied Logic Corp., Bankrupt.

ROY BABITT, Bankruptcy Judge:

This action was originally instituted pursuant to the adversary procedure route now prescribed by Part VII of the Bankruptcy Rules, 411 U.S. 1068, applicable to Chapter XI cases by Rule 11-61, 415 U.S. 1037.^{1/}

The plaintiff, New Jersey National Bank ("NJNB" or "Bank") filed this complaint seeking the validation of a lien on certain of the debtor's assets as well as an order directing the defendant to surrender possession of such assets to the Bank to satisfy the balance of some \$56,000 allegedly remaining due on a loan to the defendant. Rules 11-61(a)(1)&(2); Rules 701(1),(2). The defendant, Applied Logic Corporation ("ALC") was, at the time this action was commenced, a Chapter XI debtor pursuant to a petition filed by it on March 27, 1975. See footnote 1. ALC filed an answer with counterclaims followed by an amended answer with counterclaims alleging the impropriety of certain setoffs made by the Bank against the debtor's funds on deposit, or in the alternative, that such setoffs should first be applied to the secured loan in question. The Bank replied to the debtor's

^{1/} When the controversy dealt with by this decision began, Applied Logic (ALC) was a Chapter XI debtor in possession possessed of the powers of a bankruptcy trustee. Section 342 of the Bankruptcy Act, 11 U.S.C. § 742. Following submission of the issues, the Chapter XI case aborted, an order of adjudication was entered, and the erstwhile debtor's assets are being liquidated by the trustee. That officer, of course, pursues disposition by the Court, as indeed he should.

counterclaims and moved, pursuant to Rule 712, 411 U.S. 1074, for an order dismissing ALC's counterclaims and for judgment in its favor as sought by the complaint.

The transactions upon which this dispute rests are as follows: On September 2, 1970 ALC entered into a refinancing agreement (the "1970 agreement") with Chase Manhattan Bank, First National City Bank, First National Bank of Princeton, plaintiff NJNB as lead bank and its leasing and equipment creditors, the dominant purpose of which was to defer ALC's existing obligations for approximately eleven months and to extend further credit to it on certain specified conditions.

Prior to that 1970 agreement, ALC's obligations to the banks totaled \$1,300,000 of which \$650,000 was owed to the plaintiff, NJNB. Pursuant to paragraph 2 of the 1970 agreement, the several notes then representing indebtedness to the banks were consolidated into two notes, payable at the plaintiff Bank, one in the amount of \$300,000 which "shall be held by the New Jersey National Bank on behalf of the First National Bank of Princeton," and the other in the amount of \$1,000,000 "which shall be held by New Jersey National Bank on behalf of the other Banks." ALC also contracted to "conduct all banking of its funds at and through New Jersey National Bank until both notes are paid." Paragraph 4 of the 1970

agreement provided for the extension of a \$750,000 irrevocable line of credit by the banks, in proportion to their share of the \$1,000,000 note. In consideration for the extension of credit, certain conditions were imposed upon all. These included, inter alia, the establishment of a creditors' committee, of which a representative of the plaintiff was a member; the hypothecation by the debtor's chairman of certain securities with NJNB, the grant to the latter of a security interest in certain specified unencumbered assets and personal guarantees by some of ALC's officers and directors. Finally, ALC was required to achieve certain financial goals.

In May, 1971 ALC borrowed \$100,000 against this line of credit. It is this loan which underlies NJNB's suit here.

On September 15, 1971 ALC entered into a recapitalization agreement with all the creditors who had executed the 1970 agreement, and one additional creditor (the "1971 Agreement").

By its terms, this 1971 agreement substituted its provisions "for the terms and provisions of the Financing Agreement, which is hereby amended." It provided for the forgiveness of fifty percent of ALC's total debt principal owed to the creditors, with the exception that the \$100,000 secured debt was not forgiven to any extent. The remaining fifty percent of each party's respective debt principal (of which NJNB's share was \$325,000), designated "Close Out Debt",

by the 1971 agreement, was required to be reduced through payments "to a special account maintained with the New Jersey National Bank" of one half of ALC's positive cash flow every month. Paragraph 8(a) provided that these "[p]ayments shall be apportioned between the Lessors, the Bank and Bryant in accordance with their original amounts included in Category 1" ALC was required to raise a minimum of \$500,000 in cash as working capital (defined in the 1971 agreement as the "excess of current assets over current liabilities") and it was further provided that "ALC shall report monthly to the Banks a current aging of its Accounts Receivable." In lieu of the creditors' committee contemplated by the 1970 contract, the 1971 agreement provided that ALC should effectively surrender five of the seven seats on its Board of Directors to its creditors. In obedience to this accord, the executive vice president of the NJNB held a seat on ALC's Board. ALC eventually deposited \$500,000 of new working capital with the Bank, which was used to purchase high yield certificates of deposit. It was against these certificates of deposit, in the respective amounts of \$100,739.58, \$101,551.11, \$41,485.42, that the Bank exercised setoffs on December 3, 9, 31, 1974 and applied the funds against the \$325,000 note due under the 1971 agreement. Just about three weeks after ALC invoked this court's jurisdiction in March, 1975 by filing its Chapter XI petition, by two separate

actions a day apart, the Bank set off a cashier's check in the amount of \$830.62 and \$1,682.98 remaining in ALC's checking account.^{2/} Then, on March 30, 1976 NJNB set off another \$26,095.76 derived from an original \$60,000 certificate of deposit (\$33,904.24 of which was used to pay New Jersey state taxes) together with \$2,952.07 in total interest thereon and applied it against the open debt. Thus, after setting off these sums against its unsecured loans first, plaintiff alleges that it was left with \$56,862.93 outstanding on its pro rata share of the secured loan. In the main, it seeks by this action to foreclose its lien to satisfy the remaining indebtedness.

ALC's answer does not contest the validity of the lien on "unencumbered assets" existing at the time of the loan and described in the security agreements. Rather, it asserts by way of counterclaim that no amount is due NJNB on its secured loan because NJNB applied \$243,776.11 of ALC's funds. ALC insists that the 1970 agreement provided that the first monies repaid by the debtor should be applied to this secured loan and that the loan has therefore been repaid in full, thereby requiring release

^{2/} This case was originally referred to now retired Bankruptcy Judge Asa S. Herzog. It was retained by me after the beginning of the stewardship of Judge Herzog's successor by order of Chief Judge Edelstein. Rule 102(b), 411 U.S. 1003, applicable to a Chapter XI case by Rule 11-5, 415 U.S. 1012.

of the collateral, free of the lien asserted by NJNB, with the further result that any amounts due the latter are an unsecured obligation. Alternatively, ALC alleges that the funds were not subject to a right of setoff by a depository bank as they were held in trust for a special purpose. Such a trust, it is argued, arises from the character of the obligations created in the 1970 and 1971 agreements, as well as the plaintiff's knowledge of ALC's insolvency and its subsequent participation with other creditors in the management of ALC, and acting in that regard on behalf of the other bank creditors. Since the bank was not entitled to take a setoff, ALC argues that the funds thus taken by the Bank should be returned, and the debtor should be permitted to satisfy the loans secured by "unencumbered assets" by turning over to the Bank certain tangible assets currently in existence and giving the Bank the right to file a general claim for any deficiency.^{3/}

Turning to the first of ALC's assertions that the plaintiff is not entitled to foreclose on the security interest in unencumbered assets because the loan has been fully "repaid" the court finds support for such a proposition not in the 1970 agreement but in the 1971 pact. Paragraph 4(d) of the former provides that ALC "may

^{3/} With the termination of the Chapter XI case and the ongoing liquidation of ALC's assets to benefit all creditors under the scheme of the Act, the trustee's focus, in regard of what ALC could have been permitted to do in a viable Chapter XI case, is considerably different.

at its option at any time repay" the loan in issue and thereby release the collateral. Nowhere is it stated that the first monies repaid are to be applied to the secured loan. Such a priority is established, however, by the 1971 agreement, Paragraph 8(a) of which provides that "Category 1 claims as set forth in Schedule 1 (consisting of an amount of Remaining Rent, a portion of ALC's indebtedness to Bryant and a portion of the Guaranteed Bank Loan) shall be paid prior to payment of any other Category." The "Guaranteed Bank Loan" is defined in Paragraph 1(d) as "the \$750,000 secured loan borrowed by ALC pursuant to Paragraph 4 of the Financing Agreement." Thus, by the terms of the recapitalization agreement, the secured bank loan was to be paid first. It is settled law that where either party directs the application of a payment in advance, such designation preempts the general rule that credits are deemed to have been made in extinguishment of the earliest liabilities of a running account. DuBois National Bank v. Hartford Accident & Indemnity Co., 161 F.2d 132, 136 (3d Cir. 1947); Wolf v. Aero Factors Corp., 126 F. Supp. 872, 880 (S.D.N.Y. 1954) aff'd 221 F.2d 291 (2d Cir. 1955). Thus, even assuming arguendo that the set off was proper, the monies should have been applied to the \$100,000 secured loan first.

The main issue before this court concerns the character of the funds held by the plaintiff Bank in ALC's account and against which the former claimed a right of setoff" apparently under its reading of Section 68a of the Bankruptcy Act,

11 U.S.C. § 108a, which provides that

"In all cases of mutual debts or mutual credits between the estate of the bankrupt and a creditor, the account shall be stated and one debt shall be set off against the other and the balance shall be allowed or paid."

While the section uses the apparently mandatory "shall," the right to set off given by Section 68(a) has consistently been held to lie within the discretion of the Bankruptcy Court.

Pepper v. Litton, 308 U.S. 295, 304 (1939); Cumberland Glass Manufacturing Co. v. DeWitt, 237 U.S. 447, 455 (1915); First National Bank of Portland v. Dudley, 231 F.2d 396, 398 (9th Cir. 1956); Prudential Insurance Co. of America v. Nelson, 101 F.2d 441, 443 (6th Cir. 1939), cert. denied, 308 U.S. 583 (1939).

The Bankruptcy Court exercises its discretion on the general principles of equity. Cumberland Glass Manufacturing Co. v. DeWitt, supra at 455. The Bankruptcy Court has been reminded again and again that it applies equitable principles in its jurisdiction over cases arising under the Bankruptcy Act. See Bank of Marin v. England, 389 U.S. 99, 103 (1966), and countless others.

It is generally agreed that a bank may set off any claim, provable in character and fixed as to amount, against such credit balance as a bankrupt may then have on general deposit with the bank, despite the bank's knowledge that the depositor is insolvent at the time. Continental & Commercial Trust & Savings Bank v. Chicago, 229 U.S. 435 (1913); New York County National Bank v. Massey, 192 U.S. 133 (1904). "A general deposit of money in a

commercial bank does not create a trust, but a relation of debtor and creditor, the depositor having in addition to his rights as a creditor, certain contract rights against the bank," Restatement of Trusts § 12(1).

"However, where a deposit is not one of a general character but, rather a deposit for a special purpose (as, for example, to be paid to creditors or designated persons), the money is held as a trust fund and not a bank asset and thus the bank is without right to appropriate the deposit to its own use as a set-off," (Emphasis added), 4 Collier on Bankruptcy ¶ 68.16 (14th Ed. 1975). Judges have not disagreed, See United States v. Butterworth Judson Corp., 267 U.S. 387 (1925); Libby v. Hopkins, 104 U.S. 303 (1881); First National Bank of Clinton v. Julian, 383 F.2d 329, 337 (8th Cir. 1967); Goggin v. Bank of America National Trust & Savings Ass'n, 183 F.2d 322 (9th Cir. 1950), cert. denied, 340 U.S. 877 (1950); Avant v. United States, 165 F. Supp. 802 (E.D. Va. 1958). The standard for determining whether a bank deposit is held in trust is a broad one. "It may mean that the depositor has brought money or paper to the bank and deposited it under a label which shows that he intends to use it for a limited purpose Or it may mean that the bank, in return for cash or paper delivered to it, undertakes to perform certain acts beneficial to the depositor such as paying his debt

to a named creditor in which case the bank should be a trustee only if it obligated itself to perform its duty out of the funds deposited or its credit." Bogart on Trusts § 27.

See, also, Restatement of Trusts § 12, comment h; Killoren v. First National Bank of St. Louis, 127 F.2d 537 (8th Cir. 1942).

The burden of proving that a deposit is one for a special purpose is on the party seeking to establish it as a trust. First National Bank of Clinton v. Julian, 383 F.2d 329, 338 (5th Cir. 1967). In its effort to carry this burden, thereby defeating the setoff, ALC attacks both of plaintiff's flanks. ALC says in its charge to the right that while its account was a "general" account before 1970, and despite the fact that a separate "special account" was never set up pursuant to the terms of the 1971 agreement, the 1970 agreement which did require ALC to conduct all banking of its funds at the plaintiff Bank and which required the Bank to oversee the payment of interest on the notes to the other creditors from the funds raised and deposited pursuant to the agreement, effectively converted the account to a trust for a special purpose thereby insulating it against the setoffs taken.

In countering this attack, NJNB introduced evidence tending to show that the account was the source for a broad range of payments including ALC's utility bills, its trade payables, and monies for a separate payroll account maintained with the First National Bank of Princeton. Moreover, the Bank

went on, the language of the agreement reflected a strict differentiation between ALC's obligation to bank with it and the Bank's obligation to hold the notes "on behalf" of the other bank creditors. The specific purpose of such language, as the Bank would have it, was to preserve intact its right of set off under the agreements.

ALC's attack on the other flank is that even if the bank account does not fall within the technical definition of a "special deposit," still the Bank should be estopped from claiming a set off by virtue of its formulation of and intimate role in orchestrating the plans for the payment of ALC's creditors. Uncontradicted evidence was introduced showing that not only did the Bank play a key role in negotiating the 1970 and 1971 agreements, but it also monitored both the account and ALC's affairs through the position on ALC's Board of Directors of its man, Lynch. The Bank also received detailed monthly reports of the Bank's current aging of ALC's accounts receivables. Lynch, the executive vice president participated in the Board meeting of August 22, 1972 at which it was decided not to set up a separate special account in order to spare ALC additional burdensome administrative work. Moreover, Lynch testified that in the discussions with the other bank creditors immediately prior to the execution of the 1970 agreement, which concerned making

the bank the exclusive beneficiary of the banking activities of ALC, the other creditor banks were specifically concerned that the additional capital required to be raised under the agreement would be set off by the depository bank. Under the agreement, ALC was prohibited by the plaintiff from independently withdrawing money from the account either to establish a relationship elsewhere or in any way to reduce the Bank's capital.

It may be generally accepted that trusts are not favored under the Bankruptcy Act where their effect is to rewrite the priorities specifically created by Congress. See, e.g. United States v. Randall, 401 U.S. 513 (1971). See the priorities described in Section 64a of the Act, 11 U.S.C. § 104a, for the mode of distribution of a bankrupt's assets represents a Congressional scheme predicated upon policy considerations. Thus, trusts and disguised priorities, whatever they are called, cut against the grain of the policy reflected by Section 64a and are generally denounced.

However, to find the elements of a trust in the case would be compatible with the overriding federal policy of denying priorities inequitably gained. While the funds raised pursuant to the 1970 and 1971 agreements and deposited to ALC's bank account and subject to its check for general purposes may not be said to come within the accepted definition of a special

deposit so as to be insulated from the plaintiff's right of set off, the circumstances under which the funds were raised, and the cooperation of the Bank and ALC in their creation, "were sufficient to so far impress upon it the [equitable] character of a trust fund that the bank should be estopped to assert a lien thereon or the right of set off." Union Bank & Trust Co. v. Loble, 20 F.2d 124, 126 (9th Cir. 1927), cert. denied 275 U.S. 545 (1927). First National Bank of Portland v. Dudley, 231 F.2d 396 (9th Cir. 1956) is not only in accord but its facts are instructive as well. There the bank which held the bankrupt's note and in which the bankrupt maintained a general commercial account, participated in formulating a pre-bankruptcy agreement with the bankrupt and his trade creditors, whereby the proceeds from the liquidation of the bankrupt's inventory were to be committed toward the payment of all claims on an equal and ratable basis. Relying on this arrangement, the bankrupt's trade creditors waived their rights to attach the inventory. The day after the petition in bankruptcy was filed, the bank, as the largest creditor, asserted its right to set off the entire sum in the account. The court held that the conduct of the bank under the circumstances, "in entering into the extension agreement without expressly reserving the inconsistent right of set-off" as well as the circumstances under which the account was created, were sufficient to impress upon it the equitable character of a trust fund.

The equitable considerations impelling this Court to deny plaintiff its set-off are comparable to those forming the backdrop for the dispute between the trustee and the First National Bank of Portland, supra. At least, the Court of Appeals for the Ninth Circuit found them significant. Both there and in the case at bar the banks were to share ratably with all the other creditors in the funds generated. The trade creditors there and here relied upon the waiver of the right of set-off implicit in the pro-rata arrangement and forbore from attaching the assets of ALC, which in turn would have precluded such a fund from being created. As the court stated in 231 F.2d at 402, "[the] least that can be said is that the bank cannot in equity and good conscience be permitted to keep its ratable share of distribution plus the right of set-off."

Here I am satisfied that the elements of an estoppel are clear. The admitted facts are such that the plaintiff, confronted with the apprehensions of the other creditor banks that the depository bank could assert a right of set off, represented that it would not be in a position to do so. On this, the other creditors relied and changed their position to their detriment. The plaintiff Bank, which was a lead bank in a relationship with the other bank creditors, should not be permitted to reap the advantages of the privileged position it

gave itself.

One of the dominant impulses in bankruptcy is equality among creditors. To countenance plaintiff's setoff would be to give it not an equal start against the bankrupt's assets, but a headstart. A much better case would have had to have been made to permit derogation of the principle of equality among creditors. Granted that there might be more basis to permit a setoff against a bankrupt than a Chapter XI debtor where day to day funds are needed in an ongoing business, a thought recently suggested in Creditor Setoffs in Business Reorganization & Relief Cases, Morton, 50 Am. Bankr. L.J. Fall, 1976, and granted ALC is now a bankrupt, the Court perceives no reason to permit plaintiff to prevail for the reasons already described.

It has already been observed, footnote 1, supra, that ALC is now a bankrupt whose assets are being administered by its trustee. It has also been observed, footnote 3, supra, that, as a result, the relief sought by ALC, while a debtor, would not be compatible with the trustee's duty to liquidate a bankrupt's assets. Resultantly, the trustee is directed to settle an order on notice consistent with this opinion as it reflects the complaint, the erstwhile debtor's counterclaims in the context of a bankruptcy liquidation, and plaintiff's Rule 712 motion.

Dated: New York, New York

December 9, 1976


Bankruptcy Judge

ORDER DATED MARCH 1, 1977 GRANTING, IN
PART, JUDGMENT FOR PLAINTIFF AND JUDG-
MENT FOR TRUSTEE ON COUNTERCLAIMS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of
APPLIED LOGIC CORPORATION,
Debtor-Bankrupt

Bankruptcy No. 75 B 491

NEW JERSEY NATIONAL BANK,
Plaintiff,
APPLIED LOGIC CORPORATION,
Defendant.

ORDER

On March 27, 1975, Applied Logic Corporation ("defen-
dant") filed a petition for an arrangement under Chapter XI,
Section 322 of the Bankruptcy Act, and

On April 19, 1975 plaintiff New Jersey National Bank
commenced an adversary proceeding against defendant seeking the
validation of a lien on certain of defendant's assets as well
an an order directing defendant to surrender possession of such
assets to plaintiff to satisfy the balance of approximately
\$56,000 allegedly remaining due on a loan to defendant; and

Defendant thereafter filed its answer with counter-
claims followed by an amended answer with counterclaims
alleging the impropriety of certain ~~alleged~~ setoffs, or in the

Order dated March 1, 1977

alternative, that such setoffs should first be applied to the secured loan in question; and

Plaintiff filed its reply and moved, pursuant to Bankruptcy Rule 712, for an order dismissing defendant's counterclaims and for judgment in its favor; and

A non-jury trial having been held before me on June 23, 1976, and the parties having stipulated to include in the record the transcript of proceedings held before retired Bankruptcy Judge Herzog on June 16 and July 24, 1975; and

Following submission of the issues herein, an order dated August 10, 1976, was entered dismissing defendant's Chapter XI arrangement proceedings, and adjudicating defendant a bankrupt and appointing Daniel A. Guttermann as trustee in bankruptcy of defendant; and

Thereafter, an order was entered, upon due notice to plaintiff, authorizing the trustee herein to accept an offer and to sell certain assets of defendant for the sum of \$40,000.00 free and clear of plaintiff's lien, if any, and said lien, if any to attach to the proceeds of such sale; and said sale was consummated by the trustee, who continues to hold the proceeds thereof pending further order of this Court; and

AFTER having heard Teich, Groh & Robinson, attorneys for plaintiff, Arthur Teich, Esq. and Leon M. Robinson, Esq., of counsel, and Coudert Brothers, attorneys for defendant, Mark D. Lebow, Esq., Andrew S. Hedden, Esq., and Anthony

Williams, Esq., of counsel, and after due deliberation upon the issues tried and raised in the pleadings herein, and the Court having rendered its written decision dated December 9, 1976; *upon the letter annexed, it is*

ORDERED, that:

1. Plaintiff's motion pursuant to Bankruptcy Rule 712 for judgment *against the trustee* as demanded in the complaint is granted to the extent that ~~plaintiff shall be credited with proceeds~~ *and* in the amount of \$40,000.00 from defendant's assets sold by the trustee herein pursuant to this Court's order dated September 7, 1976;

2. Plaintiff's aforementioned motion is, in all other respects, denied;

3. Except to the extent provided hereinabove, plaintiff's complaint is dismissed;

4. Defendant is granted judgment pursuant to the counterclaims contained in the amended answer herein, in that Daniel A. Gutterman, as trustee in bankruptcy of Applied Logic Corporation, Bankrupt, shall *have judgment against* recover from plaintiff New Jersey National Bank, One West State Street, Trenton, New Jersey:

(a) Upon defendant's first and second counterclaims, the sum of \$243,776.11, together with interest thereon from March 27, 1975,

(b) Upon defendant's third

counterclaim, the sum of \$830.62,
together with interest thereon
from March 30, 1975,

(c) Upon defendant's fourth
counterclaim, the sum of \$1,682.98,
together with interest thereon
from April 17, 1975,

(d) Upon defendant's fifth
counterclaim, the sum of \$29,047.83,
together with interest from April 1, 1976,

(e) Less the sum of \$40,000.00
credited to plaintiff pursuant to
decretal paragraph 1 supra,

totalling the sum of \$235,337.54, with interest as provided above;

5. Plaintiff is hereby authorized to file a proof
of claim in this case within sixty days of the entry of a final
non-appealable order in this matter for any amounts allegedly
due to it.

6. The Clerk is directed to enter judgment
accordingly, *all without costs*
~~together with defendant's costs and disbursements,~~
but enforcement thereof or execution thereon is hereby stayed
pending the entry of a final non-appealable order in this manner.

ROY BABITT

AC

Bankruptcy Judge

Order dated March 1, 1977

A-483

Dated: New York, New York
March 1st 1977

United States of America :
Southern District of New York ss

I, ROY BASITT, Bankruptcy Judge, in and for
the said district, do hereby certify that the within instru-
ment is a true and correct copy of the original as the same
appears of record in my office.

In Witness Whereof, I have hereunto set my hand and
day of March 7th 1977

ROY BASITT

By Louise Horan
Secretary

ORDER DATED MARCH 11, 1977 EXTENDING TIME
OF APPELLANT TO APPEAL TO, AND INCLUDING,
MARCH 31, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re

Bankruptcy No. 75 B 491

APPLIED LOGIC CORPORATION,

Bankrupt.

-----x
NEW JERSEY NATIONAL BANK,

Plaintiff,

v.

DANIEL GUTTERMAN as Trustee of
APPLIED LOGIC CORPORATION, Bankrupt,

Defendant.
-----x

FILED

MAR 14 1977

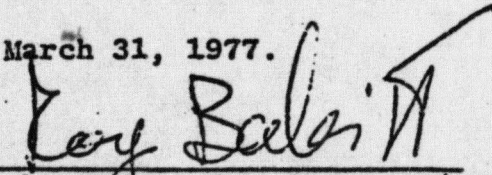
ROY BABITT
BANKRUPTCY JUDGE

Order Extending Time to Appeal

Upon the annexed stipulation by and between Coudert
Brothers, Special Counsel to the trustee herein, and Hahn,
Hessen, Margolis & Ryan, attorneys for New Jersey National Bank,
and good cause being shown, it is

ORDERED, that the time for New Jersey National Bank
to appeal from the order of this court entered in this matter
on March 1, 1977, be, and is extended to March 31, 1977.

Dated: New York, New York
March 11, 1977.


Bankruptcy Judge

NOTICE OF APPEAL TO DISTRICT COURT
FILED MARCH 31, 1977

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

In re

APPLIED LOGIC CORPORATION,
 Bankrupt.

~~72 CIV. 1548~~
 FILED
 APR 1 1977
 ROY BABITT
 BANKRUPTCY JUDGE
 Bankruptcy

5 B 491

NEW JERSEY NATIONAL BANK,
 Plaintiff-Appellant

v.

DANIEL GUTTERMAN as Trustee of
 APPLIED LOGIC CORPORATION, Bankrupt,
 Defendant-Appellee.

FILED
 U.S. DISTRICT COURT
 MAR 31 3 12 PM '77
 S.D. OF N.Y.

NOTICE OF APPEAL TO DISTRICT COURT

NEW JERSEY NATIONAL BANK, plaintiff herein appeals to the District Court from the order of the Bankruptcy Judge entered in this adversary proceeding on March 1, 1977, which order, in part, dismissed plaintiff's complaint and granted judgment to the trustee upon various counterclaims asserted by the trustee. Plaintiff appeals from all parts of the order except for decretal provisions numbered "5" and "6".

The parties to the order appealed from, and the names

Notice of Appeal
to District Court

A-486

and addresses of their respective attorneys are as follows:

Plaintiff: NEW JERSEY NATIONAL BANK

Attorneys for Plaintiff: HAHN, HESSEN, MARGOLIS & RYAN
350 Fifth Avenue
New York, N.Y. 10001
(212) 736-1000

Defendant: DANIEL GUTTERMAN, as trustee of
APPLIED LOGIC CORPORATION, Bankrupt

Special Counsel to Defendant: COUDERT BROTHERS
200 Park Avenue
New York, N.Y. 10017
(212) 973-2000

Dated: New York, New York
March 31, 1977

HAHN, HESSEN, MARGOLIS & RYAN
Attorneys for NEW JERSEY NATIONAL
BANK

By _____
Michael S. Landes
350 Fifth Avenue
New York, N.Y. 10001
(212) 736-1000

DESIGNATION OF CONTENTS OF RECORD ON
APPEAL FILED APRIL 12, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In-re :

APPLIED LOGIC CORPORATION, :

Bankrupt. :

Bankruptcy No.
75 B 491

----- x

NEW JERSEY NATIONAL BANK, :

Plaintiff-Appellant, :

-against- :

DANIEL GUTTERMAN as Trustee of
APPLIED LOGIC CORPORATION, Bankrupt, :

Defendant-Appellee. :

----- x

Designation of Contents of
Record on Appeal and Statement
of Issues to be Presented for
Review

A. Designation of Contents of Record on Appeal

Plaintiff-Appellant, New Jersey National Bank,

hereby designates, pursuant to Rule 806 of the Rules of
Bankruptcy Procedure, the following contents for inclusion
in the record on appeal herein:

FILED
APR 12 1977
ROY BABITT
BANKRUPTCY JUDGE

1. Docket entries of relevant proceedings herein.
2. Complaint of Appellant.
3. Amended Answer with Counterclaim, dated June 10, 1976.
4. Answer to Amended Counterclaims, dated June 21, 1971.
5. Transcripts of trials held before Bankruptcy Judge Herzog on June 16, 1975 and July 24, 1975.
6. Transcript of trial held before Bankruptcy Judge Babitt on June 23, 1976.
7. Exhibits introduced in evidence at trials of June 16, 1975 and July 24, 1975, and stipulated exhibits, including the following:

(a) Plaintiff-Appellant's

<u>Exhibits in Evidence</u>	<u>Description</u>
-----------------------------	--------------------

- | | |
|---|--|
| 1 | Promissory Note. |
| 2 | Security Agreement. |
| 3 | Copies of UCC filings. |
| 4 | List showing purchases of certificates of deposit by the bankrupt. |
| 5 | Signature cards. |

- | | |
|---|--|
| 6 | Minutes of Board of Directors meeting of bankrupt held on August 29, 1976. |
| 7 | Written assignment of certificate of deposit #240390. |

(b) Appellee-Defendant's Exhibits in Evidence

Description

- | | |
|---|--|
| A | Three Commercial Loan Department customer records. |
| B | Debit advice dated 4/1/75. |
| C | Receipt dated 4/4/75. |
| D | Agreements dated 9/2/70 and 9/15/71. |
| E | March 3, 1972 letter. |
| F | January 18, 1972 letter. |

(c) Stipulated Exhibit

Computer printout of aging of accounts receivable.

8. Order dated August 10, 1976 adjudicating debtor-in-possession bankrupt and appointing Daniel A. Gutterman as trustee.
9. Memorandum opinion and decision of Bankruptcy

Judge Babitt dated December 9, 1976.

10. Order dated March 1, 1977 granting, in part, judgment for Appellant and judgment for trustee on counterclaims.
11. Order dated March 11, 1977 extending time of Appellant to appeal to, and including, March 31, 1977.
12. Notice of Appeal dated and filed March 31, 1977.

B. Statement of Issues Appellant
Intends to Raise on Appeal

1. Whether the Bankruptcy Judge's conclusion of law that Appellee had proved all of the elements of an estoppel against Appellant was clearly erroneous because not supported by the court's findings of fact.

2. Whether the findings of fact were erroneous because not supported by the evidence and contrary to the clear weight of the evidence.

3. Whether the Bankruptcy Judge failed to make necessary findings of fact, including findings with respect to the specific written assignment to Appellant of a certificate of deposit in connection with the issuance of a letter of credit by Appellant.

4. Whether Appellant was denied procedural due process because it received no notice of any kind that a defense or counterclaim based on an alleged estoppel would be asserted, and was thereby denied the opportunity to introduce factual evidence on the question of estoppel.

5. Whether the relief granted by the Bankruptcy Judge's order of March 1, 1977 was proper.

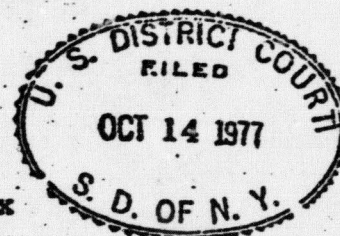
New York, New York
April 11, 1977

HAHN, HESSEN, MARGOLIS & RYAN
Attorneys for Plaintiff-Appellant
New Jersey National Bank

By: /s/
Michael S. Landes
350 Fifth Avenue
New York, New York 10001
(212) 736-1000

OPINION OF DISTRICT COURT JUDGE GERALD L.
GOETTEL DATED OCTOBER 14, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



In re

APPLIED LOGIC CORPORATION,

Bankrupt.

Bankruptcy No.

NEW JERSEY NATIONAL BANK,

Plaintiff-Appellant,

-against-

DANIEL GUTTERMAN as Trustee of
APPLIED LOGIC CORPORATION, Bankrupt,

Defendant-Appellee.

75 B 491

46445

O P I N I O N

A P P E A R A N C E S :

HAHN, HESSEN, MARGOLIS & RYAN, ESQS.
350 Fifth Avenue
New York, N.Y.

By: Michael S. Landes, Esq.
Richard N. Tilton, Esq.
Gilbert Backenroth, Esq.
Attorneys for Plaintiff-Appellant

COUDERT BROTHERS
Pan American Building
200 Park Avenue
New York, N.Y. 10017

By: Mark D. Lebow, Esq.
Victor C. Murphy, Esq.
Attorneys for Defendant-Appellee

-1-

G O E T T E L , D. J.

This is an appeal by plaintiff, New Jersey National Bank ("NJNB"), from an order of Bankruptcy Judge Roy Babitt. NJNB, in an adversary proceeding under Bankruptcy Rule 701, moved for validation of a lien on certain assets of defendant, Applied Logic Corporation ("ALC"),^{1/} and for their surrender in satisfaction of a \$56,000 balance allegedly owed to plaintiff on a secured loan. ALC, in an amended answer, admitted the validity of the lien but filed a counterclaim challenging the propriety of certain prior set-offs by NJNB of its deposits and seeking either recovery of the amounts set-off under Sections 60 (voidable preferences) or 67d (fraudulent transfers) or application of the amounts set-off to the amount allegedly owing.

A non-jury trial was held before retired Bankruptcy Judge Herzog on June 16 and 24, 1975 and continued before Judge Babitt on June 23, 1976. Judge Babitt, in an opinion

^{1/} When the action was commenced in April, 1975, defendant was a debtor in possession under Chapter XI. On August 10, 1976, Judge Babitt entered an order adjudicating ALC a bankrupt and appointing Daniel Gutterman as trustee. ALC, therefore, appears through its trustee.

-2-

filed on December 9, 1976 (embodied in an order entered on March 1, 1977), found for plaintiff in the amount of \$40,000, an amount representing the proceeds of a sale of defendant's assets subject to plaintiff's lien, but granted judgment on defendant's counterclaims, permitting recovery of all amounts set-off (\$235,337.54), with interest. The opinion and order of Judge Babitt are in all respects affirmed.

The facts found by Judge Babitt will be summarized only to the extent necessary to reveal the basis for this affirmance.

ALC was in the computer "time sharing" business, owning computers and leasing their time to its customers. By September 2, 1970, its financial condition could only be described as precarious. Its outstanding obligations to banks totalled approximately \$1,300,000 of which over \$650,000 was owed to NJNB. Consequently, ALC and its creditors (plaintiff NJNB, other large banks and its equipment lessors) entered into a refinancing agreement on September 2, 1970 (the 1970 Agreement) which deferred ALC's present obligations and extended additional credit. The 1970 Agreement permitted the creditors to closely supervise ALC's financial state -- defendant was required to do all its banking with plaintiff bank and a

-3-

creditors committee, of which plaintiff was a member, was established. The outstanding loans were converted into two notes, both held by NJNB, one on behalf of First National Bank of Princeton for \$300,000, and the other "on behalf of the other Banks" for \$1,000,000. Judge Babitt found that during the negotiations leading up to the 1970 Agreement, an officer of plaintiff, in response to expressions of concern voiced by the other creditors, assured them that NJNB would not be in a position to exercise set-offs of defendant's deposits against amounts owed to it.

In May, 1971, ALC drew \$100,000 against the credit created by the 1970 Agreement, with repayment secured by all its unencumbered assets. This loan forms the basis of plaintiff's suit.

ALC's financial condition did not improve and, consequently, another agreement was executed in 1971 (the 1971 Agreement) and substituted for the first. This time the creditors forgave a portion of ALC's debt, but the \$100,000 secured loan was maintained intact. (The unforgiven and unsecured portion of the debt owed NJNB now equalled \$325,000.) To reduce the unforgiven portion of the debt, the agreement contemplated defendant's making payments into a special account to be maintained at NJNB with payments to be apportioned among

-4-

the creditors. This special account was never established, but, pursuant to the 1971 Agreement, defendant deposited \$500,000 of new "working capital" into its general account with NJNB which was used to acquire certificates of deposit. The creditors committee was abandoned in favor of defendant's surrendering five of seven seats on its board, with one seat going to an executive vice president of NJNB, Lynch.

In December, 1974, NJNB began setting-off the certificates of deposit against the unsecured \$325,000 debt. Other set-offs followed in March and April of that year, with a final set-off in March, 1976, for a total of \$275,337.54 in set-off deposits.^{2/} By applying amounts set-off first to the unsecured obligation, a balance of \$56,862.93 remained owing on the secured loan. On August 10, 1976, defendant was adjudicated a bankrupt.

^{2/} One of the set-offs in December and another in March represented the balance of a \$100,000 certificate of deposit which had been assigned to NJNB by ALC. This certificate had acted as collateral for an irrevocable letter of credit issued by plaintiff having the state of New Jersey as its beneficiary. The letter of credit was, in turn, required as a litigation bond for ALC's potential tax liability to the state. The matter was resolved and the sum of \$33,904.24 was paid following the litigation.

-5-

Defendant did not contest the validity of the lien securing this remaining balance. Instead, in a two pronged attack, it claimed (1) that the 1970 Agreement required all set-offs to be first applied to the secured loan, with the result that the loan had been fully satisfied or, alternatively, (2) that defendant's funds had been held by NJNB in trust on behalf of all ALC's creditors and, as such, were immune from plaintiff's right of set-off. Consequently, defendant urged that the set-off funds be returned to the trustee and that the secured loan be satisfied through turning over to plaintiff the proceeds (\$40,000) of a sale of certain of defendant's assets effected by the trustee, while allowing plaintiff to file a general claim for any deficiency.

Judge Babitt found support for the first of defendant's alternatives in the language of the 1971 Agreement. He did not, however, regard this as the primary issue before him. Of first importance was the character of the funds held by NJNB since that determined its right to set-off under Section 68a of the Bankruptcy Act.^{3/} While that section recognizes the

^{3/} Section 68a of the Bankruptcy Act, 11 U.S.C. § 108 (1970) provides:

In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

-6-

traditional right to set-off funds on general deposit, no such right exists with regard to funds held in a special account or as trust funds. United States v. Butterworth-Judson, 267 U.S. 387 (1925); see Goggin v. Bank of America Nat. Trust & Savings, 183 F.2d 322, 325 (9th Cir.), cert. denied, 340 U.S. 877 (1950). The Bankruptcy Court observed that the deposits at issue here did not "come within the accepted definition of a special deposit so as to be insulated from the plaintiff's right of set-off." Nevertheless, Judge Babitt, applying the equitable powers vested in a bankruptcy court, found that "the circumstances under which the funds were raised, and the cooperation of [NJNB] and ALC in their creation, 'were sufficient to so far impress upon it the [equitable] character of a trust fund that the bank should be estopped to assert a lien thereon or the right of set-off.' Union Bank & Trust Co. v. Loble, 20 F.2d 124, 126 (9th Cir. 1927), cert. denied, 275 U.S. 545 (1927)." Opinion at 13.

The uncontradicted evidence established that NJNB played a major role in formulating the two refinancing agreements and that it closely monitored the financial status of ALC through its representation on the board. Moreover, Judge Babitt found that defendant's other creditors had relied upon plaintiff's assurances that NJNB would not exercise its right

-7-

of set-off. This reliance resulted in their maintaining the status quo established by the refinancing agreements and foregoing, to their detriment, alternate procedures to improve their own claims.

It is possible to distill plaintiff's challenges on this appeal to the following:

(1) Plaintiff was denied procedural due process because defendant's amended answer gave no notice of an intent to base its counterclaim upon an estoppel theory;

(2) that the findings of fact below were inadequate, the holding or clearly erroneous, and/did not comport with the applicable law; and

(3) that the order and judgment of March 1, 1977 did not conform to the opinion.

To determine whether plaintiff received sufficient notice of the elements underlying defendant's counterclaim, it is helpful to review the nature of the proceedings and the pleadings filed below. Plaintiff commenced an adversary proceeding to determine the validity of its lien underlying the May, 1971 secured loan to defendant of \$100,000.^{4/} Defendant

^{4/} This procedure, proper at the time, is now prescribed by Part VII of the Bankruptcy Rules applicable to Chapter XI cases by Rule 11-61, 415 U.S. 1037.

-8-

filed an answer admitting the validity of the lien, later amending its answer to include a counterclaim as set forth above. The counterclaim, while including various allegations that the funds maintained at NJNB were held in trust in special accounts for the benefit of defendant and its creditors, did not include the label of "estoppel." Plaintiff, in its reply, stated that the set-offs were proper under Section 68 of the Bankruptcy Act.

Bankruptcy Rule 708 provides that Fed. R. Civ. P. 8 applies to adversary proceedings. That Rule, while requiring estoppel to be affirmatively pleaded as a defense, permits a claim for relief to be stated by "a short and plain statement of the claim showing that the pleader is entitled to relief," adding that "[n]o technical forms of pleadings or motions are required" and that "[a]ll pleadings shall be so construed as to do substantial justice."

Clearly, defendant's statement of its counterclaim gave notice of its theory for recovering the set-offs on the ground that the funds had been held in trust. Judge Babitt/ found the deposits had the "character of a trust fund" and recognized that an equitable estoppel had been raised through plaintiff's role as the moving force behind the refinancing agreements and

-9-

active supervision of defendant's financial affairs from its vantage point of membership in the creditors committee and representation on its board. The distinction, if it exists, between these two theories of "trust" funds through the maintenance of special accounts, on the one hand, and "trust" funds through an estoppel, on the other, is so fine that plaintiff could hardly be said to have been denied procedural due process because it was left in the dark about defendant's theory of recovery. Cf. Traveler's Indemnity Co. v. Peacock Constr. Co., 423 F.2d 1153 (5th Cir. 1970).^{5/}

Plaintiff's major challenge to the holding below lies in its claim that the factual findings were inadequate or clearly erroneous and that the Judge's legal conclusions ran contrary to the applicable law.

Taking the inadequacy argument first, plaintiff contends that Judge Babitt did not make the findings necessary to support his conclusion that either a fraudulent transfer or voidable preference existed and that an estoppel had been established. As to the transfer or preference issue, plaintiff

^{5/} Plaintiff relies upon Blonder-Tongue v. University Foundation, 402 U.S. 313 (1971). The case is inapposite since it created a new rule of substantive law on the availability of the collateral estoppel defense in patent infringement actions. It did not involve the purported inadequacy of a stated counterclaim.

-10-

claims that there was no finding of fact that the defendant was insolvent when the set-offs were made, that plaintiff had reason to know of the insolvency or that some creditor of the same class as NJNB will receive a smaller percentage of its claim by reason of the set-offs. The claims of factual inadequacy on these points are illusory. First, plaintiff admitted its knowledge of defendant's insolvency in its reply to the counterclaim. Second, a finding that other creditors' claims have been diminished is implicit in the bankruptcy judge's conclusion, discussed hereafter, that these creditors had relied to their detriment upon plaintiff's foregoing its right to set-off.

On the estoppel issue, plaintiff cites a slew of non-bankruptcy cases, maintaining that the judge did not find that the classical elements of equitable estoppel existed, i.e., a knowing misstatement of material fact made with an intent to cause reliance, upon which the other party relies to its detriment. See, e.g., Philo Smith & Co., v. USLIFE Corp., 420 F. Supp. 1266 (S.D.N.Y. 1976). Defendant counters this argument by saying that, as a general rule, a bankruptcy estoppel is made out where a creditor acts in a manner inconsistent with his prior conduct after other creditors have

-11-

relied upon his earlier actions to their detriment, citing 3A Collier on Bankruptcy § 63.07[4] (14th ed. 1976); Eads Hide & Wool Co. v. Merrill, 252 F.2d 80 (10th Cir. 1958); First National Bank of Bay City v. Young's Estate, 41 F.2d 8 (6th Cir. 1930).

Whatever the rule might be in the general context of a bankruptcy proceeding, it is helpful, at this point, to examine the cases relied upon below specifically raising the estoppel issue in the context of a claimed right to set-off under Section 68 of the Bankruptcy Act.

The case of First National Bank of Portland v. Dudley, 231 F.2d 396 (9th Cir. 1956) is both factually parallel and instructive. There, as here, the bank was found to have been a moving force in an agreement among creditors under which the proceeds of an inventory sale were to be deposited in a general account and applied rateably to creditors' claims. The bank then exhausted the fund by exercising its right to set-off. There was no finding that the bank had deliberately concealed its intent to set-off, rather, the court found it sufficient, under the circumstances, that such an inconsistent right had not been explicitly reserved. See also Union Bank and Trust Co. v. Loble, supra.

-12-

The findings of the Bankruptcy Court were sufficient to bring this case within the ambit of Dudley. While not finding deliberate misrepresentation, the bank's resort to set-off was inconsistent with the spirit of the two refinancing agreements. There was testimony in the record to support the conclusion that Lynch, an officer of NJNB serving on ALC's board, reassured other creditors that set-offs would not be made. Plaintiff would limit the effect of Lynch's testimony to a statement that the bank would never be in a position to exercise its right of set-off since, by deferring defendant's indebtedness, it was hoped that additional defaults would be avoided. While the statement could be read to be such a lukewarm assurance, Judge Babitt's construction is equally tenable and not, therefore, clearly erroneous. It was further found that, by acquiescing to the terms of the agreement, these same creditors relied upon this representation to their detriment. Therefore, the findings of Judge Babitt were neither inadequate nor unsupported by the record, and precedent upholds his conclusion that an equitable estoppel existed under the facts presented.

Finally, we have plaintiff's tripartite contention that the order of March 1, 1977 does not conform with the

-13-

bankruptcy judge's opinion: that even if the funds were wrongfully set-off, they should be returned to the individual creditors, not the bankrupt's estate; that plaintiff should be given judgment for \$100,000, the full amount of the secured loan in issue, rather than limiting its recovery to the proceeds of the inventory sale conducted by the trustee; and that the validity of the assignment of a \$100,000 certificate of deposit as collateral for ALC's prospective tax liability should have been recognized.^{6/}

In support of the first of these three arguments, plaintiff claims that the refinancing agreements were executed solely for the benefit of the creditors and not the bankrupt, and, therefore, they, not the trustee, should regain the wrongfully set-off funds. In answer to this, it suffices to say that the 1970 Agreement stated that its provisions were for the benefit of all the parties concerned. Moreover, Section 70e of the Bankruptcy Act allows the trustee to succeed to the priority of any creditor over the claims of another. Finally, in First National Bank of Portland v. Dudley, supra, the funds were returned to the trustee.

^{6/} See footnote 2, supra.

-14-

Next, plaintiff argues that the judgment in its favor should not have been limited to the proceeds of the inventory sale, claiming that its security interest would extend to the cash on deposit with NJNB. Plaintiff does not cite any authority for its novel claim that it had a perfected security interest in cash on deposit, as opposed to cash constituting proceeds from the sale of assets subject to its security interest. See N.J. Stat. Ann. § 12A:9-306 (West) (Uniform Commercial Code). It appears clear that, by limiting plaintiff to the proceeds of the inventory sale while permitting a general claim for any deficiency, Judge Babitt implicitly recognized the security interest as extending only to the identified assets.

Finally, plaintiff takes issue with the purported failure to recognize the validity of an assignment of another certificate of deposit. This was the certificate assigned as collateral for the issuance by NJNB of a letter of credit in favor of the state of New Jersey to guarantee defendant's payment of a disputed employment tax assessment. The clear import of the opinion is that, to the extent the certificate was not used to satisfy the tax claim, the deposits it represents are

-15-

subject to the same equitable trust which invalidated the set-offs and, therefore, any assignment was void ab initio. Consequently, the order conforms to the opinion which, in all respects, is affirmed.

SO ORDERED:

Dated: New York, N.Y.,
October 14, 1977.



U.S.D.J.
(Part I)

NOTICE OF APPEAL TO SECOND CIRCUIT
DATED NOVEMBER 14, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

APPLIED LOGIC CORPORATION,

Bankrupt.

NEW JERSEY NATIONAL BANK,

Plaintiff-Appellant,

v.

DANIEL GUTTERMAN as Trustee of
APPLIED LOGIC CORPORATION, Bankrupt,

Defendant-Appellee.

Bankruptcy No. 75 P. 49

NOTICE OF APPEAL

Notice is hereby given that NEW JERSEY NATIONAL BANK, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Bankruptcy Judge entered in this adversary proceeding on March 1, 1977, which order, in part, dismissed plaintiff's complaint and granted judgment to the trustee upon various counterclaims asserted by the trustee and from an opinion of the United States District Court for the Southern District of New York, dated October 14, 1977 affirming said order in all respects. Plaintiff appeals from all parts of the order and opinion affirming said order ex-

Notice of Appeal to Second Circuit

A-509

cept for decretal provisions numbered "5" and "6" of the order.

The parties to the order and opinion appealed from,
and the names and addresses of their respective attorneys
are as follows:

Plaintiff: NEW JERSEY NATIONAL BANK

Attorneys for Plaintiff: HAHN, HESSEN, MARGOLIS & RYAN
350 Fifth Avenue
New York, New York 10001
(212) 736-1000

Defendant: DANIEL GUTTERMAN, as trustee of
APPLIED LOGIC CORPORATION, Bankrupt

Special Counsel to Defendant: COUDERT BROTHERS
200 Park Avenue
New York, New York 10017
(212) 973-2000

Dated: New York, New York
November 11, 1977

HAHN, HESSEN, MARGOLIS & RYAN
Attorneys for NEW JERSEY NATIONAL
BANK

By MICHAEL S. LANDES

Michael S. Landes
350 Fifth Avenue
New York, New York 10001
(212) 736-1000

1 Copies Received
Date December 23, 1977
Firm Condert Brothers
By Condert Brothers

R